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Cuba. Law etc Notarial law

TRANSLATION

OF

THE NOTARIAL LAWS

IN FORCE IN

CUBA AND PUERTO RICO

(1888.)

DIVISION OF CUSTOMS AND INSULAR AFFAIRS.
WAR DEPARTMENT,
July, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

Rec. Oct. 25, 1900.

NOTARIAL LAWS IN FORCE IN CUBA AND PUERTO RICO.

DECREE.

The Government of the Republic, in conformity with the suggestion of the colonial secretary, decrees the following:

FIRST AND LAST ARTICLE. Notaries of the islands of Cuba and Puerto Rico shall be governed by the organic law and by the annexed regulations.

Madrid, October 29, 1873.

The President of the Government of the Republic,

EMILIO CASTELAR.

The Colonial Secretary,

SANTIAGO SOLER.

NOTARIAL LAW.

TITLE I.

NOTARIES.

ARTICLE 1. A notary is the public official authorized to certify contracts and other extrajudicial instruments in accordance to law.

There shall be only one class of these officials.

ART. 2. A notary who, on being requested to certify to any public or private extrajudicial instrument, should refuse his services without just cause, shall incur the liability which may be proper in accordance to the law.

ART. 3. Each judicial subdistrict constitutes a notarial district, within which there shall be created the number of notarial offices considered necessary for the public service, taking into consideration the population, the frequency and facility of transactions, the circumstances of the locality, and the befitting maintenance of the notaries.

ART. 4. At the time of the creation of the notarial offices the Government shall fix the residence of each one of the notaries, hearing the audiencia, the governors of the islands, and the board of directors of the notarial association, respectively, and can not subsequently make any changes in the limits without hearing said bodies and the treasury and colonial section of the council of state.

ART. 5. Every notary shall make his own protocol.

ART. 6. In the case of the death, sickness, absence, disqualification, or any other disability of a notary, the person who at the time of the creation of the notarial offices was designated for this purpose, shall take charge of the protocol and substitute him.

When this is not possible for any reason whatsoever, the judge of first instance shall appoint a temporary substitute from among the notaries of the same town or of the nearest ones until the decision of the presiding judge of the audiencia.

The substitute shall cease to discharge his duties as soon as the new appointee takes possession or the disability of the notary whom he substitutes ceases to exist.

ART. 7. The residence of the notaries must be the place designated at the time of the creation of the respective notarial office.

ART. 8. Notaries may practice within the notarial district in which their office is situated, in the manner which will be stated in the regulations.

ART. 9. Towns where there is more than one court of first instance shall be considered as only one judicial subdistrict.

TITLE II.

REQUISITES TO OBTAIN A NOTARIAL OFFICE AND TO ISSUE CERTIFICATIONS.

ART. 10. To be a notary it is necessary—

To be a Spaniard and of age.

To have good habits, and have pursued the studies and have complied with the other requisites prescribed by the laws and regulations, or to be a lawyer.

ART. 11. The notaries of the islands of Cuba and Puerto Rico shall be appointed by the president of the executive power of the Republic, at the suggestion of the colonial department.

ART. 12. Notarial offices shall be filled by competitive examinations, or competition for promotion, in the manner which will be prescribed by the regulations.

ART. 13. All other means to obtain a license are hereby abolished.

Notaries shall pay, in order to practice, the tax to which the other similar professions are subject.

ART. 14. Notaries, before taking possession of their office, shall give a guaranty as security for the discharge of the duties thereof.

Said guaranty may consist of a deposit in the treasury of the State in coin or in bonds of the public debt, or either in agricultural or town property mortgaged for the purpose, guaranties which produce an annual income, the interest on which shall be fixed by a special decree, according to the conditions of each locality.

ART. 15. No oath of any kind shall be required of notaries in order for them to enter upon their duties.

Possession shall be given them by the board of directors of the notarial association.

ART. 16. The duties of the office of notary are incompatible with all other offices which carry similar power, with any other public office which carries with it a salary or gratuity out of the general, provincial, or municipal appropriations, and with offices which require them to reside away from their domicile, excepting those of Deputies to the Cortes or provincial deputies, as the case may be.

TITLE III.

PROTOCOLS AND COPIES OF THE SAME CONSTITUTING A PUBLIC INSTRUMENT.

ART. 17. Notaries shall prepare original instruments, issue copies, and make protocols.

An original instrument is the one which a notary must execute on the contract or instrument submitted for his authentication, signed by the parties interested, by the attesting witnesses, or if proper, by the witnesses who identify, and signed and marked by the notary himself.

A first copy is the transcript of the original instrument which each of the parties interested has a right to receive for the first time.

By protocol is understood the collection, in proper order, of the original instruments authenticated during one year, which shall be included in one or more bound volumes, folioed by the number written out, and with the other requisites prescribed in the regulations.

ART. 18. Second or subsequent copies of an original instrument can not be issued except by virtue of a judicial mandate, and with the citation of the persons interested, or of the department of public prosecution when the latter are unknown or absent from the town in which the notarial office is situated.

Said citation shall be unnecessary in unilateral instruments, and even in others, when all the persons interested request the copy.

ART. 19. Notaries shall authenticate all public documents with their signature, and with the rubric and mark they may select for the purpose and which they can not subsequently change without authority from the Government.

In every audiencia there shall be kept a book in which notaries shall enter their signature, rubric, and mark before entering on the exercise of their duties.

ART. 20. Notaries can not authenticate any public instrument *inter vivos* without the presence of at least two witnesses.

ART. 21. Relatives, clerks, or servants of the notary issuing the certification can not be witnesses to public instruments.

Neither can the relatives within the fourth degree of consanguinity or second of affinity of the persons interested, nor those of the notary be witnesses.

ART. 22. No notary can authenticate a contract which contains a provision in his favor, or to which any of the parties interested is a relative of his within the fourth civil degree or second of affinity.

ART. 23. Notaries shall certify in public instruments that they are acquainted with the parties thereto, or that they have assured themselves of their identity by the declaration of the attesting witnesses, or by two other persons who are acquainted with them, and who shall, therefore, be called witnesses of identification.

They shall also certify as to the residence and profession of the parties interested.

In serious and extraordinary cases in which it is not possible to state this data in full, they shall state what they themselves know on the subject and what is declared by the attesting witnesses and those of identification.

ART. 24. In all public instruments the notary shall state his name and residence, the names and residences of the witnesses, and the place, year, and day of the execution of the instrument.

ART. 25. Public instruments shall be drafted in the Spanish language, and shall be clearly written, without abbreviations and without blank spaces.

In the statement of dates or amounts therein, figures shall not be used.

Notaries shall certify to having read the instrument in full to the parties interested and to the attesting witnesses, or, to having permitted them to read it, as they chose, before they signed it, and to the witnesses of identification the part that refers to them, and to having informed them all that they have a right to read it themselves.

ART. 26. Additions, marginal notes, interlineations, erasures, or blots in original instruments shall be of no effect if they are not mentioned at the foot of the instrument and expressly approved of by the persons interested, and bear the signatures of the persons who must subscribe the instrument.

ART. 27. Public instruments shall be null:

1. When they contain any provision in favor of the notary who authenticates them.

2. In which relatives of the persons interested or the relatives, clerks or servants of the said notary appear as witnesses, in the degree mentioned.

3. In which the notary does not certify to being acquainted with the persons interested, or in which he does not state this fact in the manner prescribed by article 23 of the law, or in which the signatures of the interested parties and witnesses do not appear when they are required to sign, and the signature, rubric, and mark of the notary.

ART. 28. Provisions in favor of relatives of the person who authenticated the document containing the same, within the degree previously mentioned, shall have no effect.

ART. 29. The provisions contained in the foregoing articles, relative to the form of the instruments and the number and qualifications of the witnesses, and to the capacity to receive what has been left or willed by the testator, are not applicable to wills and other provisions *causa mortis*, in which the special law or laws governing the matter shall be observed.

ART. 30. Instruments authenticated by a notary shall be admitted as evidence within the district of the audiencia in which he resides.

In order to be admitted as evidence outside of said district the signature of the notary who authenticated the instrument must be certified to by two other notaries of the same judicial subdistrict, and countersigned by the judge of first instance, who shall affix the seal of the court.

ART. 31. Only the notary legally in charge of the protocol may issue copies thereof.

ART. 32. Neither the original instrument nor the book of the protocol may be removed from the building in which they are kept, not even by virtue of a judicial mandate or superior order, except for transfer to the proper archives and in cases of *force majeure*.

However, an original instrument may be separated from the protocol if there appears sufficient reason or cause to consider it as proof of a crime, a previous order of the court taking cognizance of the case being necessary, and a verbatim certified copy in any case being issued with the consent of the department of public prosecution.

Neither shall notaries permit any documents to be taken from their archives which are under their charge by reason of their office, nor shall they permit it or the protocol to be examined, in whole or in part, without a previous judicial decree, except by the interested persons who have an acquired right, or their heirs or legal representatives. However, in the cases determined by law and by virtue of a judicial mandate they shall exhibit in their archives the protocol or protocols, in order to attend by virtue thereof to the proceedings that may have been agreed upon.

ART. 33. Notaries shall forward through the judge of first instance to the presiding judge of the audiencia, within the first eight days of each month, indices of the original instruments executed during the previous month, stating the ordinal numbers which the latter bear in the protocol.

In the indices there shall be stated, with regard to each instrument, the name of the parties thereto, that of the attesting witnesses, that of the witnesses of identification, in a proper case, the date of the execution, and the purpose of the instrument or contract.

ART. 34. Notaries shall keep a private book, in which they shall enter with the proper numeration a copy of the wrappers of sealed wills and codicils the execution of which they may have authenticated, and the protocols of the open wills when the testators request it, and they shall

forward a private index to the presiding judge of the audiencia, through the judge of first instance, as prescribed in the preceding article. It is not necessary that there be one book for each year.

ART. 35. They shall further keep a private protocol, in which they shall enter original instruments recognizing illegitimate children when the persons interested do not desire to have them appear in the general protocol. They shall also transmit a private index of the instruments thus recorded to the presiding judge of the audiencia through the channel mentioned, and they shall not be required to form a different protocol for each year.

TITLE IV.

OWNERSHIP AND CUSTODY OF PROTOCOLS AND INSPECTION OF NOTARIAL OFFICES.

ART. 36. The protocols are the property of the State. Notaries shall keep them, in accordance with the laws, as archivists thereof, and under their responsibility.

ART. 37. There shall be in each notarial district general archives of public instruments, subject to the prescriptions of the regulations.

ART. 38. In the case of the vacancy of a notarial office and of the disability or incapacity of a notary, the person who, in accordance with article 6, is to take charge of the office, shall receive the protocols and other documents in accordance with an inventory, in order to return them, with the same formalities to the said notary, if he is reinvested in his office, or otherwise to his successor in office. The judges of first instance in seats of subdistricts and the justices of the peace in other towns shall be present when the inventory is taken and at the delivery.

ART. 39. In case of a partial or complete destruction of a protocol, the notary shall make a report to the judge and to the *promotor fiscal* of the subdistrict, and the latter to the presiding judge and *fiscal* of audiencia respectively, in order that the proper proceedings having been instituted with a citation of the parties, the indices and the books compared, and any other data which may be proper, examined, the protocols and books be restored as far as practicable.

ART. 40. Judges of first instance shall, whenever they consider it advisable, inspect the notarial offices situated within their subdistricts.

The government and presiding judges of the audiencias may order extraordinary inspections, for which they shall only appoint associate justices, judges or representatives of the department of public prosecution.

TITLE V.

GOVERNMENT AND DISCIPLINE OF NOTARIES.

ART. 41. All the notaries of the jurisdiction of each audiencia shall form notarial associations.

ART. 42. The associations shall be directed by boards, and the judicial authority, the department of public prosecution, delegated by the Government, shall have the authority therein which will be established by the regulations.

ART. 43. For offenses against discipline and others which may affect the honor of the profession, the boards of directors of the associations may censure the notaries, reprimand them in writing, and administratively punish them by fines not to exceed 50 pesos. In cases of second offenses they shall report to the audiencias, which may impose fines not to exceed 200 pesos, besides advising the colonial department thereof, in order that a memorandum may be made in the respective records of the notaries, all without prejudice to any proceedings which may be just and other disciplinary powers of the judges and audiencias.

ART. 44. Notaries can not be suspended or removed from office by governmental order.

TITLE VI.

FEES AND REMUNERATION OF NOTARIES.

ART. 45. Notaries shall earn the fees fixed in the notarial schedule which shall be arranged for the purpose.

ART. 46. A notary who is incapacitated from exercising his profession on account of rescuing the protocols from flood, fire, or other *force majeure*, shall be entitled to a pension.

Should he die for the same reason, his widow and minor children shall have the same right.

GENERAL PROVISIONS.

ART. 47. All that is prescribed in the foregoing articles and in the annexed regulations shall be observed in the islands of Cuba and Puerto Rico from April 1, 1874.

The laws, provisions, and customs relating to the organization of notarial offices shall cease from this date to be observed and shall be considered repealed.

TEMPORARY PROVISIONS.

1. All persons who, at the time of the publication of these provisions, are, by virtue of the proper certificate, issuing both judicial and extrajudicial certifications, shall continue to exercise the same duties.

2. Proceedings actually being held pending decision, shall be decided in accordance with the laws and provisions in force at the time they were instituted.

Madrid, October 29, 1873.

The Colonial Secretary,

SANTIAGO SOLER.

ORGANIC NOTARIAL REGULATIONS FOR CUBA AND PUERTO RICO.

TITLE I.

NOTARIAL OFFICES.

ARTICLE 1. In notarial offices there shall not be comprised territory located in different judicial subdistricts, with the exception of towns where there is more than one court of first instance, which shall be considered as one only.

ART. 2. All the notarial offices of each judicial subdistrict shall form a notarial district.

ART. 3. Notarial districts constitute the jurisdiction of the notarial association of each of the audiencias of the islands, respectively.

ART. 4. The number of notarial offices and their seat or place of residence of each notary shall be the ones designated in a special decree.

TITLE II.

APPLICANTS FOR NOTARIAL OFFICES, DECLARATION OF VACANCIES, AND THEIR PROVISION.

ART. 5. In order to aspire to the diploma to act as a notary, besides the qualifications prescribed by article 10 of the law, it is necessary to have no permanent physical impediment or defect preventing a full discharge of the duties of said office.

ART. 6. Notarial offices become vacant—

1. By transfer.
2. On account of the existence of permanent physical disability or moral incapacity, declared by virtue of administrative proceedings.
3. By a final judgment sentencing to perpetual, absolute, or special disqualification for the office of notary.
4. By the abandonment of the office.
5. By an accepted resignation.
6. By death.

ART. 7. After a notarial office has been declared vacant, its provision shall be announced in the official newspapers of the provinces included within the jurisdiction of the notarial association.

ART. 8. Vacancies, no matter what reason causes them, shall be filled, one by competitive examination, and another by transfer, two series within the jurisdiction of each notarial association being established for this purpose.

In all cases the applicants shall present their written applications to the dean of the notarial association, within the period of thirty current days, to be counted from the day following the publication of the last announcement of the call.

ART. 9. The competitive examinations shall be held in the seat of the association and in the building designated for the purpose by the presiding judge of the audiencia.

The board of examiners shall be composed of:

An associate justice, who shall preside as the delegate of the presiding judge of the audiencia, by whom he shall be appointed.

A professor of notarial law, or in his place a professor of another branch of law, appointed by the rector of the university.

A practicing lawyer, selected by the presiding judge of the audiencia.

In the absence of the professor another lawyer.

The dean of the notarial association.

The secretary of the board of directors of the said association, who shall also act as secretary of the board.

ART. 10. Applicants shall be admitted to the competitive examinations in the order of presentation of their applications, for which purpose the secretary of the board shall make a signed memorandum on the former, stating the day and hour of presentation. The board shall call the opponents by stating the day, hour, and location in advance and giving the announcement due publicity. The applicant who, for any reason whatsoever, does not appear, shall lose his turn and be the last one. Should he not present himself then, he shall be considered as having abandoned it; but if he should duly prove that he was ill, or any other creditable cause, another period shall be granted him, which cannot be extended.

ART. 11. The competitive examination shall consist of two parts—a theoretical one and a practical one. Both parts shall be public.

For the theoretical examination 100 questions shall be placed in a box referring to theory and practice of notarial legislation, Spanish civil law, colonial legislation, mortgage legislation, duties of notaries, and general principles regarding the drafting of public instruments. The competitor shall draw eight questions by lot and shall answer them immediately, being allowed forty minutes for this examination; and should he conclude before they have elapsed, he may enlarge on the points he may select.

For the practical examination the opponent shall draw by lot one of fifty slips of paper contained in a box, which shall include the same number of subjects, in order to execute a public instrument to be drafted at once by the opponent, and when delivering it to the president he shall state what is to be done until the instrument is included in the protocols and the first copy is issued.

The examiner of the board shall make no announcement or observation to, nor ask any question of, the opponent regarding the subject-matter of the examinations.

ART. 12. At the end of the competitive examination the board shall make the classification behind closed doors, and, taking into consideration the results of the examination, shall designate the competitors approved of as excellent, very good, good, or fair.

A classification shall be made for each notarial office, and also a list of three persons, both of which shall be forwarded to the colonial department through the presiding judge of the proper audiencia.

ART. 13. The Government shall appoint one of the three persons contained in the list.

ART. 14. The proceedings for the filling of vacancies in notarial offices by competition for promotion or transfer, shall be instituted in the colonial department. The applicants shall present their petitions through the board of their respective association within the period of the call, which, besides the announcement prescribed in article 7, shall be published in the *Gaceta de Madrid.*

The Government shall be free to select one of the applicants; but in no case shall they appoint a notary who has not served in his office for four years at least, to a vacancy of a higher class.

Notaries of Cuba and Puerto Rico, as well as those of the Peninsula and the Balearic and Canary Islands, may apply for said transfers.

ART. 15. All appointments of notaries made either by virtue of competitive examinations or by competition for promotion shall be published in the official newspapers of the territory of the proper association, stating the article of the law or of the regulations by virtue of which the appointment was made.

TITLE III.

DIPLOMAS, LAPSE OF APPOINTMENTS, BONDS, POSSESSION, AND OFFICIAL INSIGNIA OF NOTARIES.

ART. 16. Notaries-elect shall be allowed three months to secure their diplomas, computed from the date of the official publication of their appointment.

Should they not do so, they shall be understood to have renounced their right, and their appointments shall lapse, unless they have obtained an extension for just cause.

ART. 17. After the appointment of a notary has lapsed, in case of a competitive examination as well as that of a transfer, said vacancy shall be filled by one of the other applicants who applied at the time the first one was appointed.

Should the last appointment also lapse, the vacancy shall be announced and filled according to the series to which it corresponds.

ART. 18. A notary-elect shall not obtain his diploma without previously constituting the guaranty referred to in article 14 of the law, and presenting the document proving said constitution.

ART. 19. Diplomas of notaries shall be prepared in accordance with

the form which shall be adopted for this purpose by the colonial department.

ART. 20. A new diploma shall be issued to every notary transferred, who shall annex it to the one he may have previously obtained, at the foot of which the presiding judge of the audiencia shall make a memorandum of cancellation.

ART. 21. When the notary obtains the diploma he shall present it as soon as possible to the board of directors of his association, which shall give possession to the notary-elect at a public meeting and on the day fixed by the dean.

ART. 22. On the same day of taking possession the notary shall appear, after the proper permission, before the presiding judge of the audiencia in order to enter his signature, rubric, and mark in the book which shall be kept in the secretary's office of the audiencia for this purpose.

ART. 23. A personal record of each one of the notaries of the district shall be kept in the secretary's office, or in the archives of the association. The diploma of the notary shall always be annexed thereto, by means of a certified copy issued by the same.

ART. 24. Within fifteen days following the taking of possession, which is the act of incorporation into the association, the notary shall establish himself at his place of residence, and shall immediately enter on the discharge of his duties, giving notice thereof through a communication, in which he shall make known his mark, signature, and rubric to the judge of first instance of the subdistrict, to the justice of the peace of the town, and to the other authorities or officials whom he considers proper to advise.

ART. 25. All notaries may use as the official insignia of their office an oval gold medal 19 millimeters from end to end and 15 wide, with a broad thread surrounding it, containing on the obverse a closed protocol book, and surrounded by two olive branches, with the following motto around it: *Nihil prius fide;* and on the reverse the date of the notarial law of May 28, 1862. Said medal shall be worn on the left side of the chest, suspended from a white and green ribbon.

TITLE IV.

INCOMPATIBILITIES AND PROHIBITIONS OF NOTARIES.

ART. 26. Notaries can not certify outside of the notarial district to which the town of their residence corresponds.

They may practice in the town of their residence and also in all of the towns of the same district; but a notary may only go to the town of the domicile of another notary in order to certify to contracts or last wills if previously and specially called, in cases of sickness or physical disability of any of the parties which prevents them from coming to the residence of the notary called, which must appear in the instrument, under the strictest responsibility of the authenticating notary.

ART. 27. Notaries can not be surety for the contracts they certify to, nor take part in the notarial district:

1. In transactions of speculation, exchange, or profit which are not the income of their own property.

2. In the administration of any bank or discount or brokerage establishment of a commercial or industrial company or of enterprises for leasing public revenues.

3. In contracts or business in which they take part by virtue of their office.

ART. 28. In the case of the last paragraph of article 16 of the law, a notary who is obliged to leave his residence as a Deputy to the Cortes or as a provincial deputy shall, under his responsibility, make a memorandum immediately after the last original instrument of his current protocol of the day and the reason for his absence, officially advising the presiding judge of the audiencia, the judge of first instance of the district, and the dean of the notarial association of the territory.

He shall make a memorandum of his return with the same formalities.

ART. 29. Besides the provisions contained in article 16 of the law, notaries who are appointed in accordance with the same can not, for any reason whatsoever, exercise judicial powers in inferior and superior courts, no matter of what denomination and class the latter may be.

ART. 30. The relatives of a notary within the fourth civil degree of consanguinity or second of affinity can not apply for appointment as notaries of the same town, unless there are four or more notarial offices in the latter which are filled by notaries who are not relatives.

ART. 31. Notaries can not certify to incidents which occurred in public acts presided over by a competent authority without first submitting it to the same. Said authority can not make any opposition to the former discharging the duties of his office, after having complied with the aforementioned requisite.

TITLE V.

PROTOCOLS, ORIGINAL INSTRUMENTS, AND INDICES OF THE SAME.

ART. 32. Each protocol shall include the original instruments of each year, counting from January 1 to December 31, both inclusive, even if during said year the notarial office has become vacant and a new notary may have been appointed.

ART. 33. All original instruments shall bear the proper number, written in letters, by order of dates.

ART. 34. All the pages of the protocol shall be folioed with their number according to the proper order, also written in letters; besides this numeration the figures may be added.

ART. 35. All the sheets of original instruments shall be composed of full sheets of stamped paper, in accordance with the provisions in force or which may hereafter become operative.

ART. 36. On the side by which original instruments are to be bound they shall have a blank margin of 20 millimeters, besides one of 60 millimeters on each page at the left of the text, in which the notary shall make his rubric.

The edges of the paper shall not be trimmed nor cut for any reason whatsoever.

ART. 37. Notaries can not commence the drafting of any original instrument except on a new sheet, and on the face or page of the paper which contains the stamp, continuing the instrument on the sheet which is not stamped; nor may they use for the protocol anything but entire sheets, it being required that the pages of the same which remain blank be folioed, which shall be considered as margins on which to continue legal annotations of the respective instruments after the margin is filled.

ART. 38. The first page of the first sheet of each protocol shall contain the following title:

"Protocol of the public instruments corresponding to the year ———."

And after dating it in letters it shall be signed and rubricated.

Every protocol shall be closed in the same manner on the last day of each year, the following memorandum, authenticated by the notary, being placed immediately after the last instrument:

The protocol for the year ——— is closed, containing ——— public instruments and ——— folios, certified to by me, the undersigned notary of N.———, and I hereby certify to not having authenticated any others.

And he shall mark, date in letters, sign, and rubricate.

ART. 39. When the annual protocol, on account of its volume, should be bound in more than one volume, in the judgment of the notary, the first one shall be closed and the second one begun with the memoranda mentioned in the foregoing article, changed in so far as may be necessary in order to state the months included in each volume. The different volumes shall not be considered different protocols, for which reason the paging begun in the first volume shall not be interrupted and a new paging commenced in the second. It is necessary to state in the final memorandum of the last volume of each protocol, besides the number of instruments and folios of the volume, the number of instruments and folios which together form the protocol.

ART. 40. When a notarial office becomes vacant the justice of the peace of the town of the residence, accompanied by the clerk of the inferior court, shall repair to the office in order to make the following memorandum immediately after the last instrument of the current protocol, which shall be dated in letters and signed by both:

This notarial office has become vacant on account of ———, there being up to the present time in this protocol ——— authenticated public instruments and ——— folios, to which I certify. [Date and signature.]

ART. 41. Notaries shall carefully preserve in wrappers the original instruments until the protocol is bound.

The wrappers shall be of a size slightly larger than that of the stamped paper, and the sheets of the instruments must not be folded therein.

ART. 42. Within the first eight days of each month, according to article 33 of the law, the notaries shall forward to the presiding judges of the audiencias an index of the original instruments executed during the previous month, or shall certify that none have been executed.

The indices and their copies shall be made on paper stamped with the stamp of the office.

In the case mentioned in article 40 of these regulations the justice of the peace and his clerk shall make the index of the instruments authenticated and not included in the last monthly index, forwarding it to the presiding judge and leaving the copy as has been prescribed. The indices shall be drafted in accordance with the form contained at the end of these regulations.

ART. 43. In the first two months of each year the protocols must be bound, with the exception of the private ones, which are in course of formation in accordance with the law.

ART. 44. Notaries are responsible for the completeness and preservation of the protocols, either in wrappers or bound, if they become impaired on account of lack of care, and shall restore them at their own expense, besides incurring the fine or disciplinary correction to which they have made themselves liable.

If there is any reasonable cause to suspect that a crime has been committed, the institution of an action shall immediately be begun.

ART. 45. The protocol shall be bound in parchment, under the responsibility of the notary; the inside cover shall be larger than the outside one on the three sides which are not sewn, so that being folded over the edges of the protocol they may be fastened or closed over the outside cover, the edges of the sheets of the protocol being thus protected.

On the back of the same the following shall be written in large characters: "Protocol, year of ——— (whatever it may be, in figures)."

ART. 46. Notaries shall keep the protocols under lock and key in the same building in which they reside.

ART. 47. As a general rule all protocols are secret.

With regard to the protocols specially kept private, treated of in articles 34 and 35 of the law, the formalities prescribed for general protocols shall be observed in so far as applicable, complying with the provisions of the articles of the law herein mentioned.

They shall be bound at the end of the year during which the instrument bearing No. 100 was authenticated. In the meantime their wrapper shall have on the tape two bands of crossed paper fastened with a wafer at their point of crossing, and it shall be rubricated. Whenever a new original instrument or a copy of the wrappers of closed wills and codicils is to be placed in the wrapper, in accordance with the aforesaid

articles of the law, said bands shall be broken and new ones placed thereon with the proper formalities until they are bound.

The title on the volume of the latter or on the face of the wrapper, if they have not yet been bound, shall be—

For the packages referred to in article 34 of the law: "Private testamentary protocol. Year of ——— (in figures)."

For the protocols treated of in article 35 of the law: "Private protocol. Affiliations. Year of ——— (in figures)."

ART. 48. Nothing but black ink without ingredients which might corrode the paper, or cause the writing to fade, blot or disappear, shall be used for original instruments.

ART. 49. Notaries shall certify to public instruments under their own hand, first making their mark, and then signing and rubricating below the mark.

ART. 50. No notary shall make his mark or sign with a stamp.

ART. 51. Original instruments shall be drafted in accordance with article 25 of the law, a clear, pure, and precise style being used, without any phrase or word which is obscure or susceptible of ambiguity.

When it is necessary to introduce a document, paragraph, phrase, or word written in another language or dialect, its translation shall be placed immediately thereafter, or what the party understands by the foreign phrase, word, or name shall be explained.

ART. 52. The abbreviations and blank spaces treated of in article 25 of the law do not refer to initials, abbreviations, or phrases sanctioned by custom, titles of honor, expressions of courtesy, of respect, or of honored memory, nor shall the blank spaces left at the end of a line be considered such when the following one is the beginning of a paragraph; but in the latter case the blank space must be covered by a line made with the same ink as used in the drafting of the document.

ART. 63. Original instruments shall be signed in accordance with the second paragraph of article 17 of the law and in the presence of the number of witnesses prescribed by article 20 of the same; but if the parties or any one of them does not know how or can not sign, the notary shall state this fact, one of the witnesses being required to sign, writing in his own hand before the signature that he does so in person as a witness and in the name of the party or witness who does not know how or is not able to do so.

ART. 54. For the purposes of article 20 of the law, by public instruments *inter vivos* is understood all those which are executed without consideration or relation to the death of the executor.

ART. 55. One at least of the witnesses required for public instruments *inter vivos* must be able to read and write, should the parties interested not be able to do so.

If the parties interested know how to sign, it shall not be necessary for the witnesses to sign, nor that one of them should be able to do so.

When witnesses of identification are also necessary, in accordance

with article 23 of the law, one at least must be able to sign, and shall sign, and in both cases the details regarding the witnesses prescribed by article 24 of the law shall be stated.

ART. 56. The impediments treated of in article 21 of the law do not refer to witnesses of identification, when they assist in that capacity only.

ART. 57. As a general rule witnesses of identification shall not be so called except when neither the notary nor the attesting witnesses are acquainted with the parties. If the notary only is acquainted with them, the witnesses of identification shall not be necessary, the former stating this fact. If only one of the attesting witnesses is acquainted with them, one witness of identification only shall be necessary, even though he is not able to sign. The notary must be personally acquainted with all the witnesses of identification.

ART. 58. In the cases of the third paragraph of article 23 of the law in which it is impossible for a notary to certify as to being acquainted with the parties interested, and the latter can not present witnesses of identification, he shall so state it, mentioning the two documents which are presented to him in proof of the name, status (whether married or single), residence and origin, besides giving the reason for the serious or extraordinary cause referred to in the aforementioned article of the law.

ART. 59. The obstacles to being witnesses to public instruments established by articles 21 to 27 of the law refer only to the clerks or amanuenses, whether they receive a salary or not, and to servants; but not to students and alumni who are in the notarial office, provided they do not receive a salary.

ART. 60. The parties interested may object to certain persons acting as witnesses to the instrument, unless they execute it by virtue of law or a judicial mandate.

ART. 61. The presence of the witnesses is required for the reading, approval, and signature, all of which shall take place at the same time.

ART. 62. Persons who are capable of being witnesses to public instruments commit an honorable and praiseworthy act. In cases of necessity, and at the instance of a notary, the local authorities must administratively compel one or more residents to appear as witnesses to a public instrument.

ART. 63. It shall not be necessary for a notary to state at the end of each written clause of the instrument in question that he certifies to the same, nor to the conditions or legal circumstances of the persons or things referred to; it shall be sufficient for him to state once in each public instrument that he certifies to all that is contained therein in order to have said statement include all words and real or personal stipulations and conditions contained in the instrument, in accordance with the laws.

ART. 64. The certification as to the knowledge of the profession and

residence of the parties, which a notary is required to issue as prescribed by the second paragraph of article 23 of the law, shall be sufficient that it be in accordance with the statement of the said parties.

ART. 65. A notary, when his own private obligations are involved, may also be a party to the instrument, writing before his signature *by me* and *before me* and he may in a similar manner authenticate the obligations of his relatives.

ART. 66. The placing in the protocol of all kinds of instruments and contracts prescribed by the laws is the exclusive privilege of notaries.

When, by virtue of judicial instruments, proceedings, or suits, it becomes necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be authenticated and placed in the protocol by a notary residing in the town where the court is established, for which purpose the original decrees and any other data necessary for the compliance with the order shall be furnished him.

The selectión from among the notaries filling said conditions shall be made by the persons interested if the designation is unanimous; otherwise the selection shall be made by the judge or court.

A protocol of judicial instruments shall not be kept for any reason whatsoever.

TITLE VI.

COPIES OF THE PROTOCOL AND OF CERTIFICATES AND INSTRUMENTS AUTHENTICATED BY NOTARIES.

ART. 67. By public instrument shall be understood, besides the original instrument, the copies of the same issued with the legal formalities.

ART. 68. Public instruments shall contain a precise citation of the protocol and of the number of the original instrument according to the same, of which they are a copy, and they shall be issued, marked, signed, and rubricated by the notary on stamped paper and with the other legal formalities.

ART. 69. First copies shall always be issued with a statement of their class.

Two or more copies may be issued, but each person interested or party thereto can not demand more than one of the notary.

ART. 70. At the time of the issue of any first copy the notary shall make a memorandum at the margin of the original instrument and above his signature, of the person or persons for whom said first copy is issued, the date of the issue, and the class of stamped paper on which it is drafted, besides stating all these details in the subscribing clause with which the public instrument is closed, according to article 68.

ART. 71. In addition to each one of the parties thereto, according to article 17 of the law, persons basing their claims thereon have a right

to a first copy—as, for example, a lender—in an instrument constituting a loan, although he does not execute it; a payer, although he does not issue the receipt, and other similar ones; notaries in a case not specified observing the customs and general jurisprudence.

ART. 72. The person who appears to have obtained his first copy, according to the protocol, can not obtain another one without the formalities of article 18 of the law. Whenever second copies are issued, a memorandum shall be made in the same manner as indicated for first copies in article 70; stating also in the authentication or *concordance* that it is a second copy; the number of the time it has been issued, for what person, the date of issue, on what stamped paper, and the date of the judicial mandate.

The latter shall not be necessary when the citation treated of in article 18 of the law is not required.

ART. 73. In order to issue copies in accordance with article 31 of the law, it shall be understood that the protocol is legally—

1. In charge of the notary in possession of the notarial office.

2. In charge of the notary charged with the same when it is vacant or the owner is absent or incapacitated.

3. In charge of the archivist, when archives of the notarial districts exist.

Courts shall never, either officially or at the instance of an interested party, order clerks of courts who act simply as recording clerks (Escribanos actuarios) to issue in fulfillment of judicial orders copies of original instruments, but they shall demand them of the notary who is required to issue them in accordance with the law and the preceding paragraphs. The provisions contained in the third paragraph of article 32 of the law shall be observed, with regard to the comparison or acknowledgment of these copies.

ART. 74. By a legalization is understood the certification written immediately after the instrument, dated, marked, signed, and rubricated by two notaries, certifying that the notary who authenticates uses a mark, signature, and rubric similar to those which appear, and which seem to be of his own hand, and that he was practicing on the date of the instrument, nothing to the contrary being known.

ART. 75. When, in accordance with article 30 of the law, there do not exist two notaries in the district who can legalize, the judge of first instance will legalize with his countersignature and the seal of the court.

ART. 76. Notaries who are members of the board of directors of each notarial association may, during the time they hold said position, legalize the mark, signature, and rubric of each of the notaries of the territory.

ART. 77. No notary can refuse to legalize without giving good reasons; but if he has any reason to doubt as to the authenticity of the mark and signature, he may suspend its legalization for three days, in order to dispel his doubts.

Should he not be able to do so, he can refuse to legalize, and in such case he shall immediately address a communication to the judge of first instance and to the dean of the notarial association, informing them thereof.

ART. 78. Notaries may receive in deposit the documents, bonds, and sums which private persons may desire to deposit with them, either as security for the fulfillment of contracts or for safe-keeping.

The admission of these deposits is voluntary, and the notary may impose conditions upon the depositor, which shall be stated in the receipt or document of security issued by the notary.

ART. 79. Notaries, in order to keep a record of depositions for presentation as evidence, of certificates of existence and certifications of the legality of signatures as well as of the legalizations of marks, signatures, and rubrics of notaries, shall make a memorandum in a book kept for the purpose. The memorandum shall consist of a very brief entry, sufficient to show the work done. Every entry shall be authenticated with the surname of the notary, one being made immediately after the other. The book shall be composed of stamped paper of the same class as that of the protocol, and when, on account of the volume of the former, the notary considers it proper, he shall have it bound.

A report of such memoranda or entries is not required in the monthly index.

ART. 80. All notarial memoranda made at the instance of a party and not included in the provisions of the preceding article shall be signed by the notary and by the persons interested, and if any of the latter do not know how or can not or will not sign, this fact shall be stated. These memoranda shall be made in the same manner as the original instruments in the current protocol; they shall be included in the monthly indices, and as many copies as they may request shall be issued to the persons interested, duly marked, signed, and rubricated, without stating whether they are first, second, or subsequent ones, and on the same class of paper as the depositions for presentation as evidence.

TITLE VII.

ARCHIVES OF PROTOCOLS AND OFFICIAL INSPECTIONS THEREOF.

ART. 81. Archives of protocols are general and special.

The former are the district archives established in the seat of each judicial subdistrict. The latter are the private ones of each notary.

ART. 82. No person who is not a notary shall be permitted to have archives of protocols in his possession.

ART. 83. General archives shall be made with the protocols, books, and documents of the notarial offices included in the respective territory of each district, which are more than thirty years old. The thirty latest protocols shall form the special archives of each notarial office, and every year the proper protocol shall be sent to the general archives.

The private book and protocol referred to in articles 34 and 35 of the law shall be forwarded to the general archives thirty years after the date of their commencement.

ART. 84. The general archives of each district shall be in charge of a notary whose residence is in the seat of the same district.

The appointment of the archivist of protocols shall be made by the colonial department.

ART. 85. The judge of first instance shall give possession to the notary archivist, having the books and papers of the archives turned over to him according to inventory in his presence and in that of the secretary of the court, making a memorandum, the original of which shall remain on file in the archives, and copies thereof being sent to the board of the notarial association and to the president of the audiencia.

The inventories of archives must necessarily contain a statement of all the papers of the same; and with reference to the protocols, they shall state their number, folios of each volume, notaries who authenticated them, and years they include.

ART. 86. Notary-archivists can not be suspended nor removed from office except for the reasons and in the manner prescribed for notaries.

ART. 87. All expenses incurred by reason of the organization, custody, preservation, and others relating to the archives, shall be defrayed by the notary-archivist.

ART. 88. Archivists shall receive for the safe keeping and search for instruments and for the issue of copies, the fees fixed in the notarial schedules.

ART. 89. Notaries shall personally take to the general archives of the district to which they belong the protocol or protocols and books, which they must deposit there every year, guarding them up to the instant they personally deliver the same to the archivist.

ART. 90. Said general archives shall be subject to the inspection and surveillance of the boards of directors of the notarial associations and of the presiding judges of audiencias.

Either one of them may order, when they consider it advisable, ordinary or extraordinary inspections of certain archives, making the proper memoranda.

ART. 91. Judges of first instance as delegates of the presiding judge of the audiencia shall make an annual inspection of the archives of protocols of their district, making a memorandum of what they may observe with regard to the condition of the protocols and of the building in which they are kept, as well as of the care of the same collections of instruments, forwarding a copy of the memorandum to the presiding judge of the audiencia of the territory.

In towns where there is more than one judge of first instance the senior in service shall be delegated.

ART. 92. Boards of directors and presiding judges of audiencias may

discipline notary-archivists for any errors they may commit in the discharge of their duties, which shall consist of warnings, reprimands, or fines up to 200 pesos.

ART. 93. In the case of the destruction of the whole or of a part of a protocol, besides the obligations prescribed for notaries by article 39 of the law, they must also inform the board of directors of the association.

If the notary interested can not comply with the prescriptions of said article of the law and of the present one, any other notary residing in the same locality shall do so. Should there not be another one the justice of the peace shall have this obligation.

ART. 94. Besides the authorities stated in article 40 of the law to inspect protocols in ordinary or extraordinary cases, the authorities of the public treasury may order special inspections of notarial offices, only with regard to the legal use of stamped paper; but in accordance with the said article 40 of the law, there shall be appointed for this purpose the *fiscales* of the treasury and the *promotores* of the inferior courts, who are the legal representatives of the treasury.

These may commission to the inspection of certain notarial offices, justices of the peace of the town where the protocol to be inspected is situated.

ART. 95. The boards of directors of the associations may also delegate one or more of the members of the association to inspect certain notarial offices, in order to remedy the defects or omissions capable of correction in the manner of writing and keeping the instruments and protocols and to assure themselves of the exact and uniform compliance with notarial obligations in the entire territory, the board imposing the penalties considered proper and which are in their power.

TITLE VIII.

ORGANIZATION AND DISCIPLINE OF NOTARIES AND ADMINISTRATIVE CORRECTIONS.

ART. 96. Notarial associations shall be established in every town where there is an audiencia, which shall be called "Notarial association of the territory of ———."

ART. 97. The notarial association shall be managed by boards of directors composed of—

One president, with the title of dean of the association.

Two censors.

One treasurer.

One secretary.

ART. 98. Only notaries who reside in the seat of the territory may be elected to the foregoing offices, and they shall be elected by the majority of the votes of all the association notaries.

Notaries who do not reside in the seat may forward their votes in a sealed envelope.

ART. 99. The office of member of the board shall be triennial, obligatory, honorary, and without pay.

The election shall take place from December 15 to 24 if it be a general one, and the persons elected shall take possession from the following 1st of January. If it be for a specified position it shall take place within thirty days after the vacancy has occurred and for the time of the triennial remaining until the entire renewal of the board.

ART. 100. The boards of directors shall elect a notary in each district, who shall be called delegate, and another one to take his place, who shall be called subdelegate. Through these persons the board of directors shall maintain the most rigorous discipline among all the notaries; they shall uniform the practice and shall do all that is necessary for the best public service and the decorum of the class. The office of a delegate of a district shall be for three years, but the board may reelect the same notary.

This position is also honorary, gratuitous, and obligatory, with the exception of a case of reelection.

ART. 101. Notaries in so far as their disciplinary organization is concerned, are under the jurisdiction of the judge of first instance of the subdistrict, of the board of directors of their association, of the chamber of administration of the territorial audiencia, and of the colonial department.

ART. 102. Besides the powers granted boards of directors of notarial associations by article 43 of the law, they shall have the following:

1. To communicate officially with presiding judges of audiencias and with the colonial department.

2. To communicate in the same manner with boards of other associations, in order to prepare in an identical manner all data and information which may be requested by the department or the presiding judges and *fiscales* of audiencias for any reason whatsoever.

3. To prevent or compose differences which may arise between notaries by reason of their office.

4. To prepare the annual budget of the administrative expenses of the association, levying on each one of the members thereof for the amount he is to contribute thereto, and which shall not exceed in one or more annual assessments the amounts fixed for the purpose at a general meeting.

5. To collect and disburse the funds of the association, submitting an annual report and justified statement to the presiding judge of the audiencia.

The boards shall also be under the obligation to form and keep a personal record of each notary, with a memorandum regarding their vicissitudes, merits, and services, as well as to keep all of their decisions in a paged book authenticated by the dean and the secretary.

The other attributes of boards and of each member thereof, not stated in the law nor in these regulations, shall be included in the private rules and regulations of each association.

ART. 103. Judges of first instance, at the suggestion of the boards of directors of associations, shall impose the disciplinary corrections which must be applied to notaries of their district, at the instance of the *promotor fiscal* or officially. There shall be no other remedy against their decision except an appeal to the chamber of administration of the audiencia.

ART. 104. The chambers of administration of audiencias may proceed against the boards of directors of associations, at the instance of the *fiscal* or officially, imposing on them fines not to exceed 200 pesos and the other correctional penalties established by the law. From the decision of the chambers of administration the boards of associations may appeal to the colonial department, which may annul or reduce the correction imposed, but never increase it.

ART. 105. From the decision of the board of directors, by virtue of article 43 of the law, an appeal lies to the chamber of administration of audiencias.

ART. 106. The appeals treated of in the preceding articles, with regard to the imposition of fines, shall not be admitted if the payment of the same is not previously proven.

ART. 107. As a coercive measure, the colonial department may also impose fines not to exceed 200 pesos on boards of directors of associations and on notaries.

ART. 108. The cash fund of the associations in charge of the treasurer shall be composed of—

1. The amount collected from notaries.
2. The part of the schedule fees to which the notaries, at a general meeting of the association, agree by an absolute majority, with the previous approval of the Government.

ART. 109. Notarial associations may hold general meetings in the seat of the territory in order to discuss only subjects of interest to the class or practice of the profession.

A general meeting can not be called except by the presiding judge of the audiencia, at the instance of the respective board of directors of each association.

The presiding judge of the audiencia shall preside over the general meeting, unless he appoints, as he may do, a person authorized to preside.

The sessions of the general meeting can not last more than eight days.

At the general meetings the notaries of the territory may assist personally and vote, when they are not the only ones in their place of residence, and those of the residence of several notarial offices, provided they leave therein some notaries to attend to the public service.

Notaries who do not take part in the general meeting may send their vote in writing and sealed, or delegate their powers to any of those who do assist.

TITLE IX.

TRANSFERS, EXCHANGES, LEAVES OF ABSENCE, RESIGNATIONS, SUBSTITUTIONS, AND DISQUALIFICATIONS OF NOTARIES AND CLASSIFICATION OF NOTARIAL OFFICES.

ART. 110. Notaries may request their transfer to another notarial office in accordance with the prescriptions of the law and these regulations regarding the filling of notarial offices by competition for promotion.

ART. 111. Notaries may be transferred to a notarial office of the same grade as the one they are in possession of within or without the territory of the same association, for just cause, duly proven in administrative proceedings at which the interested person, the board of the notarial association, and the chamber of administration of the audiencia shall be heard.

As just cause shall be considered any serious offense committed in the discharge of his duties or any other which lowers the notary in the opinion of the public. The person who is to be transferred in accordance with this article may only fill one of the vacancies corresponding to the transfer series.

ART. 112. Only in cases of public benefit, in the judgment of the Government, after receiving reports from the chambers of administration and the boards of directors of the associations, and taking into consideration the age, health, and other circumstances of the persons interested, may exchanges between notaries be consented to, provided they have notarial offices of the same grade and that there is not more than ten years' difference in the age of the persons effecting the exchange.

ART. 113. Notaries may absent themselves from their offices when there is no urgent need for their services—for five days those residing in towns where they are the only ones; for ten days where there are two, and for fifteen days where there are more. Whenever they make use of this privilege they shall advise the dean of the association, or the delegate or subdelegate thereof, according to the cases.

If any of them or the judicial or administrative authorities notice an abuse of this authority on the part of any notary, they shall inform the board of directors of the association, which shall impose the proper disciplinary penalty, reporting it to the presiding judge of the audiencia.

With the exception of the case mentioned in the preceding paragraph, notaries can not absent themselves without previous permission, which shall be granted for sufficient reasons by the board of the notarial association for a period not to exceed two months, and by the presiding judge of the audiencia for a period exceeding two months and

not more than four, after receiving a report from the board. In the first case the request for the leave of absence shall be addressed through the delegate or dean to the board, and in the second through the latter to the presiding judge. The Government only may grant leaves of absence for more than four months, after receiving a report from the board and the presiding judge.

Every notary who enjoys a leave of absence shall be under the obligation to inform the dean of his return to take charge of his notarial office on the same day he does so. The boards of the associations shall see that no notary exceeds the leave of absence granted him, and should any exceed said period they shall advise the presiding judge of the audiencia thereof.

ART. 114. Notaries may resign from their office, but not in favor of a determined person. The powers and obligations of notaries who resign shall not cease until the resignation has been accepted.

ART. 115. When for any reason whatsoever there does not exist the legal substitute for each notarial office, and the notary is temporarily incapacitated, he may appoint another notary of the same town to take his place. Should there not be another one, the one of the nearest residence shall substitute him.

ART. 116. It is understood that the substitution treated of in article 6 of the law is temporary; therefore the transfer of protocols to the notarial office of the substitute is not obligatory; but the latter shall take charge of the key of the office in which they are kept, and adopt any other measures he may consider prudent for the security of the same. The documents he authenticates shall be placed in the protocol of the notarial office of the person substituted. The former shall state the reasons, and shall credit to the latter half of the fees collected during the substitution.

ART. 117. When a notary is permanently incapacitated, being over 60 years of age and having filled the office for a period of twenty years, he may request that his office be declared vacant, the person taking the same being under the obligation to pay the former an annuity during his lifetime, the amount of which shall be fixed in each case, this incumbrance being mentioned in the announcement which may be made to fill the vacancy.

ART. 118. If the notary becomes incapacitated for any of the reasons mentioned in article 46 of the law, he may make use of the privilege granted him in the preceding one, notwithstanding that he has not reached the age nor served the years prescribed; but in such case he shall lose the right to the pension treated of in the said article 46 of the law.

ART. 119. The boards of directors of the associations may grant from the funds of the same the concession of a fixed sum, and for once only, to a notary who has made efforts to save his archives or those of another notary from flood, fire, or other force majeure, even though he has not been incapacitated nor suffered any personal bodily injury.

ART. 120. For all legal effects notarial offices shall be classified in accordance with the following order of grades:

1. Of the seat of an association.
2. Of the seat of a district.
3. Of any other point.

ART. 121. Notarial associations shall have the special regulations for their local management which may be adopted at a general meeting; but the draft of their regulations shall be submitted to the approval of the Government.

They may in the same manner create mutual benefit associations or such associations as they may consider advisable.

TEMPORARY PROVISIONS.

1. All individuals who, under any title and with the proper diploma, issue extrajudicial authentications shall be called notaries. They shall continue to officiate, but with strict subjection to the requisites and duties or limitations fixed by their respective diplomas.

2. All notaries who at the time of the publication of these regulations are discharging duties not incompatible up to the present time with the notarial profession, may continue to do so, provided they are not required thereby to reside outside of the locality of their notarial residence indicated in the diploma.

3. The Government shall at once issue the proper rules in harmony with temporary provisions Nos. 3 and 4 of the law of May 28, 1862, and article 5 of the law of June 18, 1870, in order that the alienable public offices be classified, the rights of the holders thereof declared, and that the proper indemnity be paid them by reason of the reincorporation of said offices into the State.

4. The Government, after the proper reports, shall equitably decide in all special cases the questions and consultations submitted with regard to the application of the reform of notarial offices in the personal part as well as in all that relates to the institution of public certification.

5. All provisions and practices conflicting with the execution of these regulations are hereby repealed.

Madrid, October 29, 1873.

SANTIAGO SOLER,
Secretary for the Colonies.

APPENDIX I.

Royal decree of May 16, 1878, reducing the fees fixed by the Notarial Schedules approved for Cuba and Puerto Rico on November 8, 1874, by 20 per cent.

SIR: By a decree dated November 8, 1874, there were approved, with a provisional character, the notarial schedules which are at present in force in Cuba and Puerto Rico, it being ordered at the same time by the eighth of the general provisions of the aforesaid decree that the notarial boards of the seats of audiencias, taking into careful consideration the requirements, number of transactions, income of the notarial offices, and other similar circumstances in each territory, draft a new project, which, after a report from the bars, and after hearing the opinion of the proper court sitting in full, was to be forwarded to this department for the proper effects.

Everything has been carried out in the manner prescribed, and the proceedings terminated with the report issued by the colonial department of the council of state.

Taking into consideration that the opinions of the different bureaus and corporations consulted are not in harmony, the undersigned secretary judges that the dissatisfaction occasioned in the colonies by the notarial schedule in force is evident.

The deputies for Puerto Rico, urged by their constituents, have several times indicated their desire and even the urgent necessity to reduce the rates fixed in said schedules, and there is no doubt as to the advisability of radically modifying the schedules in force at the present time, substituting for them other more equitable ones and changing the general idea of their plan and system.

In the meantime, after a fuller examination of the question and in view of the data which constitute the proceedings instituted by the department of grace and justice for a similar reform in the Peninsula, the time has arrived to lay before Your Majesty the proper, definite determination, the justice and advisability of modifying the provisional regulations in force appearing evident, by reducing all the sections of the schedule of November 8, 1874, by 20 per cent.

The annexed project includes two other amendments which refer to the general provisions of said schedule. By the first one private persons who consider themselves injured may impugn the accounts of notaries before justices of the peace, with an appeal to the judge of first instance and without any subsequent remedy, instead of to the audiencia of the territory, by which the exercise of their right is facilitated to the persons interested, saving them considerable expense. The second one is prompted by the necessity to harmonize Nos. 4 and 5 of the schedule with the provisions which the mortgage law, as applied to Puerto Rico, and which by a decree of this date is extended to the island of Cuba, established as a minimum rate for the purposes of records in registries of property.

By virtue of the reasons expressed, the undersigned has the honor to submit for the approval of Your Majesty, the following draft of a decree.

Madrid, May 16, 1878.

Sir, at the royal feet of Your Majesty,

SALVADOR DE ALBACETE.

ROYAL DECREE.

By virtue of the suggestion of the secretary of the colonies, and in accordance with the council of secretaries, and hearing the colonial department of the council of state,

I hereby decree the following:

ARTICLE 1. All sections of the notarial schedules provisionally approved for the islands of Cuba and Puerto Rico by a decree of November 8, 1874, are hereby reduced by 20 per cent.

ART. 2. The opposition which, in accordance with general provision No. 4, may be brought by the persons interested against the accounts of notaries, shall be instituted before a justice of the peace, with an appeal, if proper, to the judge of first instance of the subdistrict in which the notarial office in question is situated, without further remedy, the liability of the judge rendering the decision being always reserved.

ART. 3. Numbers 4 and 5 of the schedule are modified with regard to the value of articles which are the subject of contracts, according to the prescriptions of general provision number 6 and in accordance with the provisions of the mortgage laws.

ART. 4. The provisions of this decree shall go into operation on the 1st of next July, and after publication of the annexed modified schedule in the *Gacetas* de Cuba and Puerto Rico.

Issued at the Palace on May 16, 1879.

ALFONSO.

SALVADOR DE ALBACETE,
Secretary for the Colonies.

Notarial schedules which shall be provisionally in force in the islands of Cuba and Puerto Rico by virtue of the preceding decree.

No.	ORIGINAL INSTRUMENTS.
1	For each sheet of an original instrument in all kinds of contracts, wills, nuncupative codicils, and other instruments not expressly excepted in this schedule, 7.50 pesetas.
2	For the examination of prior data and for that of documents which must be attached to the registry or included in its copies, or which are necessary to prove the identity of the contractors, for each sheet, 0.24 céntimos.
3	If the documents mentioned in the preceding number have to be renewed on the proper stamped paper, for each memorandum made on the new copy, 1 peseta.
4	For original instruments or recordable contracts involving articles or sums not exceeding 1,500 pesetas, 1.60 per 100. In those which involve amounts of more than 1,500 pesetas to 2,500, 2.20 per 100. For fees for the copy of said instrument which are to be taken to registers of property, half of the fees fixed for the respective original instrument shall be charged.
5	For original instruments of all kinds of contracts involving articles or sums above 2,500 pesetas to 6,250, fees shall be charged in accordance with No. 1 of this schedule. (Those of No. 1.)
6	In contracts with a right of repurchase, exchange, award in payment of debts, impositions of annuities (censos), and others involving the real delivery of cash, or its equivalent in other obligations, either at once, acknowledged or deferred, provided they are not expressly excepted in this schedule, fees shall be collected in accordance with the following paragraphs: For original instruments of contracts the value or amount of which exceeds 6,250 pesetas and is not more than 62,500, 0.80 céntimos per 100. For those involving more than 62,500 pesetas up to 156,250 there shall be charged, besides the rate fixed in the foregoing paragraph, 0.40 céntimos per 100 for the excess. For those involving an amount greater than 156,250 pesetas up to 312.500, besides the amount fixed in the preceding paragraphs, there shall be charged 0.20 centimos per 100 for the excess. For those involving more than 312,500 pesetas to 625,000, besides the rates fixed in the preceding paragraphs, there shall be charged 0.10 céntimos per 100 for the excess.

Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	ORIGINAL INSTRUMENTS.
	Contracts involving more than 625,000 pesetas shall pay fees as if they did not exceed said amount.
	In these contracts notaries can not collect the fees referred to in number 2 of this schedule.
	The instruments of the declaration of the capital the husband brings in marriage, receipts; lets and sublets, and the articles of partnerships and corporations shall be considered as included in number 1 of this schedule. (Those of No. 1.)
7	In contracts of redemption of annuities (censos), repurchases, loans with a mortgage, pledge, or bond, or without these guarantees, cessions of credits for a consideration, dowries, portions, articles of marriage, with a delivery and gifts *propter nuptias*, three-fourths of the proportionate fees which are fixed in the foregoing number shall be changed.
8	For the application of the scale referred to, the principal involved in the contract shall serve as a regulating figure in the imposition of annuities (censos), obligations, bonds, and constitution of mortgages.
	In sales and awards in payment of debts the amount thereof, minus the annuity charges and others which are not purely mortgage charges.
	In the redemption of annuities (censos) and cession of credits, the principal for which the latter are created and the former redeemed.
	And in exchanges, the estate having the highest value.
9	For instruments of public services for the State the following fees shall be charged:
	In contracts up to 62,500 pesetas, 50 pesetas.
	When they exceed said sum up to 625,000 pesetas, there shall also be collected 0.50 céntimos for every 625 pesetas in excess.
	From 625,000 pesetas and over, nothing shall be collected for the excess.
10	In bills of sale of property and rights of the State and those of the redemption of annuities (censos) there shall for the present be charged one-half of the proportionate fees, according to the rules prescribed in the foregoing number.
11	When the instruments or contracts are executed outside the office of the notary within the town of his residence, besides the fees corresponding to the respective instrument, he shall charge the following ones, according to the classes:
	In the seat of an audiencia, 10 pesetas.
	In the seats of inferior courts, 7.50 pesetas.
	In other localities, 5 pesetas.
	At night the double shall be charged.
	The case is excepted where the executor is materially incapacitated to execute the instrument in the office of the notary.
	If the latter is forced to leave the town of his residence at the request of an interested party he shall in all cases, without exception, besides the fees due for the instrument or contract he is to authenticate, charge the following:
	In seats of audiencias, 50 pesetas per day.
	In seats of inferior courts, 30 pesetas.
	In other towns, 20 pesetas.
12	For sealed wills and codicils, including the proceedings of opening, 24 pesetas.
	If the sealed will or codicil is deposited with the notary he shall charge 40 pesetas more.
13	Declaration of poverty and copy thereof, including its drafting, when it takes place outside of the office of the notary on account of material incapacity of the person interested, 10 pesetas.
14	For general powers for suit, 10 pesetas.
15	Memoranda of withdrawals, cancellations, extinction of obligations, and other similar ones which must be made at the margin of the original instrument, 2 pesetas.
	COPIES.
16	For each sheet of first, second, or subsequent copies of original instruments issued within the year of their execution, 2 pesetas.
	If they are of other years, he shall charge for each year he is requested to examine 0.25 céntimos extra.
	For the care and preservation for each year of age, 0.25 céntimos.
17	Marginal notes stating that copies have been issued, 1 peseta.
	CERTIFICATIONS AND OTHER NOTARIAL WORK.
18	For each sheet of a certificate relating to any class of documents exhibited for this purpose, 4 pesetas.
19	For each sheet of insertions or literal certificates, 2 pesetas.
20	If the documents exhibited are of the sixteenth and seventeenth centuries, there shall be charged for each sheet of literal copies 3 pesetas.
	For each sheet in abstract, 6 pesetas.
	When they refer to dates prior to the sixteenth century, for each sheet of a literal copy 10 pesetas.
	For each sheet of copies in abstract, 20 pesetas.
21	When a notary is requested to certify to anything outside of his office, he shall earn for each hour engaged:
	In seats of audiencias, 15 pesetas.
	In seats of subdistricts, 10 pesetas.
	In other towns, 5 pesetas.
22	For consultations and opinions regarding professional matters, for each hour:
	In the seat of an audiencia, 8 pesetas.
	In other seats of subdistricts, 6 pesetas.
	In other towns, 4 pesetas.
23	For the authentication of documents, 7.50 pesetas, which notaries shall not collect, being represented by the stamp of the association which must be affixed in accordance with the provisions of the regulations for the execution of the notarial decree-law.

Notarial schedules which shall be provisionally in force, etc.—Continued.

No.	CERTIFICATIONS AND OTHER NOTARIAL WORK.
	No fees shall be charged for the memoranda required by said authentications or by depositions issued for presentation as evidence.
24	For extrajudicial auctions in which notaries take part at the instance of an interested person, they shall charge for each hour engaged: In seats of audiencias, 15 pesetas. In the other seats of the subdistrict, 10 pesetas. In other towns, 5 pesetas. The memoranda to be made of said auctions shall be gratis.
25	Placing in the protocol judicial records of inventories, partitions and awards of property, for each sheet, 0.31¼.
26	When the placing in the protocol is the result of judicial orders, he shall collect for fees for the latter 5 pesetas.
27	Memorandum of protest of a note or draft with the copy thereof and the proper one according to the commercial provisions, 15 pesetas.
28	Work to be done in order to indicate the document protested, 5 pesetas.
	To receive payment before sunset the day of the protest, deliver the draft and cancel said protest, the notary shall collect for the first hour engaged 13 pesetas. For each successive one, 10 pesetas.
29	Certificates as to existence, 5 pesetas.
30	Orders for notifications and summons, communications and notices to clerks, and similar work, 4 pesetas.
	ARCHIVES.
31	Literal copies of instruments and other instruments contained in protocols and filed in the general archives or special ones of the notarial offices, when the date of the document is subsequent to the seventeenth century, there shall be charged for each sheet 2 pesetas.
	When the copy is issued in abstract there shall be charged for each sheet 4 pesetas.
	If the documents referred to are previous to the seventeenth century, the provisions contained in No. 20 of this schedule shall be observed. (Those of No. 20.)
	There shall further be charged for the search for each year that it is requested to examine 0.25 céntimos.
	Per year when the protocols relate to a year prior to the present century, 2 pesetas.
	Charges for preservation and custody, for each year of age, 0.25 céntimos.
32	If any memorandum is to be made in an archived protocol, there shall be charged, besides the proper fees, according to the foregoing number, 2.50 céntimos.
33	For certified copies of public instruments or documents of the protocol, issued by virtue of a judicial mandate, there shall be charged, besides the fees for search and preservation, for each sheet, those fixed in Nos. 16 and 17. (Those of Nos. 16 and 17.)
34	For comparing copies or certified copies, by virtue of judicial mandates, when it is done in the office of the archives, per hour, 7.50 pesetas.

GENERAL PROVISIONS.

1. The price of the stamped paper is not included in this schedule.

2. The notary archivists shall issue, without charging any fees, and on official stamped paper of the office, or on that of poor persons, according to the cases, and without prejudice to renewing them at the proper time, certified copies and copies of instruments which they must issue at the instance of offices of the State, or at that of persons declared too poor to litigate, it being necessary in the latter case, when proper, that a judicial mandate be issued.

3. Notaries, in making up the account of their fees, shall in every case cite the numbers of the schedule applied.

4. The persons interested may impugn the accounts of notaries.

The oppositions shall be instituted before the proper justice of the peace.

The justice shall decide as he may deem proper, after authority from the notary; and any of the parties interested may appeal from the decision he may render to the judge of first instance of the subdistrict in which the notarial office in question is situated, who, after the same formalities, shall decide without further recourse.

In order to decide the opposition there shall be taken into consideration that the drafting of the instrument must be in accordance with the prescriptions of the regulations for the execution of the notarial law, and the number of 20 lines on the page containing the stamp and

24 on the other ones shall be considered the average figure for sheets in the registries as well as in the copies and depositions.

5. When a notary charges too much by way of fees, he shall pay, besides the amount he is ordered to return, and provided the judge considers it proper, the same amount again by way of fine, in the proper stamped paper, and in all cases, the expenses caused by said opposition.

6. The application of No. 4 of this schedule shall be understood as suspended until the mortgage law is put into operation, and as a consequence thereof the registry of property.

7. The present schedules have a temporary character only.

8. Without prejudice to the provisions contained in this schedule, private parties are at liberty to stipulate with notaries regarding the amount of fees, provided they are always less than the amounts fixed in the same.

9. All previous provisions relating to notarial fees are hereby repealed.

Madrid, May 16, 1879.

Approved by His Majesty.

ALBACETE.

APPENDIX II.

Royal order of January, 18, 1885, extending to the Islands of Cuba and Puerto Rico article 76 of the General Notarial Regulations of November 9, 1874, in force in the Peninsula.

YOUR EXCELLENCY: In view of the resolution of the board of directors of the notarial association of Habana, regarding the request of the notaries of Matanzas asking that a series be established for drawing up protocols when the designation of the notaries depends upon the judge or other authorities, in the terms prescribed by article 76 of the general notarial regulations of November 9, 1874, in force in the Peninsula;

In view of the favorable reports of the chamber of administration of the audiencia of Habana, and of the general administration of grace and justice of this department;

Considering that it is just that the distribution of drafting protocols, which are included in the case aforementioned, be made with the greatest equality possible, in order that notaries may all equally enjoy the benefits which may arise therefrom;

His Majesty the King (whom God preserve) has considered it proper to order that the said article 76 of the General Notarial Regulations of November 9, 1874, be extended to the islands of Cuba and Puerto Rico, and which reads as follows:

The placing in protocols of all kinds of acts and contracts prescribed by law corresponds exclusively to notaries.

When by virtue of acts, proceedings, or judicial suits it is necessary to draft an original instrument, the judge or court taking cognizance of the former shall order that it be drafted, authenticated, and filed in the protocol by the licensed notary residing in the town where the court is established, for which purpose the original decisions, certified copies, and data necessary for the compliance with the order shall be furnished him. If the data forwarded is not sufficient the notary may request of the parties interested, or of the judge or court directly, the ones which are lacking to complete the documentation.

The selection of the notaries who have said qualification belongs in the first place to the parties interested; if the designation is not unanimous, there being no harmony in the selection, the judge or court shall appoint the notary whose turn it is, for which purpose he shall transmit the proper communication to the delegate or subdelegate of the notarial district or to the dean of the association, if it should be in the seat of the latter, in order that they may appoint him, and who shall keep the proper book for the purpose. The appointment according to series or by the designation of the parties interested shall appear precisely in the decrees and in the instrument.

When the recording clerk is also a notary, said series may be omitted.

Which I communicate to Your Excellency by royal order for your information and subsequent effects.

May God preserve Your Excellency many years.

Madrid, January 18, 1885.

TEJADA.

To the Director-General of Grace and Justice of this Department.

APPENDIX III.

Decree of February 25, 1874, ordering that the owners of all classes of alienated public offices authorized to certify, in the territory of the islands of Cuba and Puerto Rico, present, before October 1, 1874, in the secretaries' offices of the respective audiencias, the documents referring to the ownership of the same, and prescribing rules for the classification and declaration of rights.

The organization of notarial offices in the islands of Cuba and Puerto Rico having been radically modified by the law of October 29, 1873, it was just and necessary to fix the bases which should govern the institution of the proceedings for indemnification for the alienated public offices authorized to certify which, by virtue of a final precept, must unavoidably be reincorporated into the State.

There is no doubt that the decree of the same date, published in the *Gaceta* of the 5th of the following November, filled this requirement, and with an activity worthy of applause; but, taking into consideration the system in contempt of law in force in the provinces of Cuba and Puerto Rico, and which determined all that related to alienated offices, and the undersigned secretary being of the opinion, on the other hand, that it would not be useless to the interests of the State to demand any data which might conduce to the indispensable clearness in the reigning chaos, he considers it advisable not only to somewhat enlarge the legal requirements of the said decree, but also to give greater scope to its provisions, in order to avoid by this means that the action of the chambers of administration of the respective audiencias, ceding, perhaps, to a conciseness which does not look very far into the future, be one day paralyzed, either by the lack of concrete legislation to which to adhere, or the insufficiency of the ideas, or of the lack of sufficient authority and powers to demand the documents which might be required for an elucidation of the numerous doubts which will surely arise.

Therefore, on account of the privileges which up to the present time the ownership of alienated offices carried with it in Cuba and Puerto Rico, acknowledging the confusion which with marked insistence used to arise in the discrimination and exercise of determined functions, and in view also of the complication involved in the different measures which were issued on the subject and which were in constant conflict with the neglect of an exact fulfillment, the undersigned secretary does not consider as sufficient for a good administrative management and for the necessary dignity of the law the presentation of only the documents prescribed by article 2 of the decree cited, of October 29, 1873, but, on the contrary, he firmly believes that all of those should be demanded which, in order to avoid doubts, tend honestly and loyally to a complete justification of the law of ownership and of the nature, character, and existence of alienated offices.

And if these are the ideas of the secretary in a matter which, up to the present time, involved old and special proceedings and privileges ordinarily but little known; if, in the march of modern progress, he

directs his efforts to energetically avoid the transgression of laws and the usurpation of rights; if, finally, he must not forget that so delicate a question may directly affect the brilliancy and splendor which it has been decided to give notarial offices in the colonial provinces, it is evident that he can not accept the final periods of time prescribed by article 3 of said decree in ordering that chambers of administration of audiencias shall definitely decide proceedings for indemnification within the period of three months, and by this department within a month, which can not be extended, computed from the date on which the papers in the case were received by the same.

The contents of this provision are not only in conflict with the unforeseen requirements which are constantly arising and also against the wishes of the undersigned secretary, but, speaking logically, are almost impossible. To demonstrate this fact it is sufficient to remember the considerable number of proceedings which will have to be instituted for the purpose, the delicacy of their examination, the errors capable of correction which they may contain, the new data which may be demanded, and the necessity of hearing, on more than one occasion, the honored opinion of the council of state or of any of its departments.

And if to this may be added, from a practical standpoint, that there are in the Peninsula suits which, in accordance with the notarial law of 1862, have not as yet, for good reasons, arrived at a final settlement, they will evidently demonstrate the uselessness of further efforts on the part of the undersigned to still more justify his opinion in this matter, which has been thoroughly considered.

Based on these remarks, therefore, the undersigned secretary has the honor to submit to the approval of the council of secretaries the following draft of a decree.

Madrid, February 25, 1874.

VICTOR BALAGUER,
Colonial Secretary.

DECREE.

The Government of the Republic, at a meeting of the council of secretaries and at the instance of the colonial secretary, decreed the following:

ARTICLE 1. The owners of all kinds of alienated public offices authorized to certify in the territory of the islands of Cuba and Puerto Rico shall present, before October 1, 1874, in the secretaries' offices of the proper audiencias, the documents referring to the ownership of the same, for their proper classification and the declaration of rights.

ART. 2. The documents or instruments the presentation of which is indispensable, are the last one of the acquisition of ownership in favor of the actual possessor, the one of the previous owner, those which prove the payment of the proper fees and taxes, as well as the existence or freedom from incumbrances, and any others which tend to justify the validity of the offices; all without prejudice to the ones which the chambers of administration may consider it useful or necessary to demand at any time, and according to the cases, in order to duly justify the right of ownership in an incontrovertible manner, and the nature, character, and legal assistance of the former.

The originals of these documents or compared certified copies may be presented.

ART. 3. In view of the documents presented and the other ones it may be considered advisable to demand, the chambers of administra-

tion of audiencias shall make the proper classification of the offices and of the rights of the owners of the same and shall forward the proceedings to the colonial department for a definite decision and a declaration of the right to indemnification.

ART. 4. All alienated public offices which at the time of the putting into operation of the notarial law in Cuba and Puerto Rico are vacant, shall be at once considered as having reverted to the State after indemnification, as well as those which become vacant in the future through the death or cessation of the persons who actually discharge the functions derived from the original titles or certificates of ownership.

ART. 5. The amount of the indemnification shall be satisfied when the material reincorporation into the State is effected—that is, when the vacancy is at the free disposition of the Government; but neither one nor the other shall be effective unless the office in question has been previously classified as admissible and with right to indemnification.

ART. 6. In consequence thereof the appointments made and approved of prior to the putting into operation of the aforesaid law, and which are a matter of private right of ownership, shall have their legal effects in accordance with the prescriptions of the same, and particularly with regard to the provisions contained in the temporary ones of the said law and of the general regulations for its execution.

ART. 7. Without prejudice to what has been ordered, the chambers of administration of audiencias shall see, now and at all times, that possessors of offices for one life only prove their existence in the ordinary form by means of the proper certificates; not neglecting, as soon as the death of any of them occurs, to institute the proper proceedings and declare the extinction of the office, immediately submitting a report in writing to the colonial department for the proper approval.

ART. 8. In the same manner the chambers of administration shall take care to state with clearness and preciseness in all proceedings relating to indemnifications for alienated offices, whose owners do not personally discharge the duties thereof, who may be the appointed managers, and by virtue of what title they exercise and are to continue exercising the functions of their office until it is rendered vacant by death or legal cessation.

ART. 9. From April 1, proximo, on which date the new notarial law is to go into operation, the exercise of each and every one of the prerogatives which the ownership of alienated offices authorized to certify carried with it, is prohibited in the islands of Cuba and Puerto Rico.

ART. 10. The owners of said offices who do not make use of the privilege granted them by article 1 of this decree within the limit of time fixed therein, shall lose all right to indemnification, and the colonial department, at the instance of the respective chamber of administration, shall, at the proper time, decree its due reincorporation into the State.

ART. 11. In cases of doubt, lack of written evidence, or of acknowledged abuses, the Government shall decide, hearing the council of State or one of its departments, and leaving to the interested parties the legal remedies which they may deem it advisable to make use of.

ART. 12. The colonial secretary shall, at the proper time, demand of the Cortes the suitable credit in order to pay the indemnifications which may be legally granted.

ART. 13. It is incumbent upon the said colonial secretary to issue all rules and interpretations which may be necessary for a faithful compliance with the prescriptions of this decree.

ART. 14. The decree of October 29, 1873, published in the *Gaceta* of the 5th of the following November, is hereby repealed, in so far as it conflicts with the provisions of the present one.

Madrid, February 25, 1874.

FRANCISCO SERRANO,
President of the Executive Power of the Republic.
VICTOR BALAGUER,
Colonial Secretary.

The first one of the provisions contained in the order of the President of the Executive Power of the Republic, of December 15, 1874, and which follows, is a further explanation of the foregoing decree:

In stating in the preamble of the notarial decree-law that if the modifications it involved contained any defect time would make them evident in order to correct them at the proper time; and the general regulations for the execution of the same, delegating to the Government the duty of deciding any questions and consultations which might arise, observed great prudence, it being known that such delicate matters like alienated offices would naturally require, although without conflicting with the provisions of the law, either an interpretation of some of the provisions of the regulations or their modification or reform, and always a certain amount of discretion which, for exceptional cases and with regard to said provisions, was from the beginning indisputable.

The Government being authorized by the third temporary provision of the aforesaid regulations to immediately issue the proper rules relating to the classification of the alienated offices authorized to certify and to the declaration of rights of the owners and of the payment of the respective indemnification, said privilege was in part taken advantage of by means of the decree of February 25 of the present year, in which, notwithstanding that rules are established for the institution of the proceedings which, by virtue thereof, may arise, the lack of the amount of the indemnifications has, however, been observed; a lack which will naturally affect such proceedings by making their conclusion more difficult, and on the other hand accuses of a noncompliance with the aforesaid temporary provision in the part prescribing that the rules which may be adopted on the subject, be in harmony and not subject to provisions, also temporary, Nos. 3 and 4 of the law of May 28, 1862; provisions which are precisely the ones which concretely treat of the point in question, and without the previous declaration and clear knowledge of which it is not possible to arrive at a necessary and final decision regarding the rights involved.

Therefore, if the interpretations which lead to this point will avoid unnecessary expense on the part of the persons interested, as well as slow and undeterminate proceedings, it would be just to acknowledge that measures tending to define the rights which by reason of their origin and specialty must necessarily differ in the means, proceedings, and manner of making them effective, from the general principle established, will not be without result nor less beneficial.

And, further, if besides the alienated offices authorized to certify conferred in perpetuity; if besides that absolute ownership to which the said provisions refer, there exist also, although lamentably ignored by all legislation on the question, offices conferred for one life only, which are only to last during the lifetime of their legitimate possessors; and if the notarial decree-law for the islands of Cuba and Puerto Rico not

only respects them in the discharge of their office for this entire period, which is the only obligation of the State, but also exalts them, elevating their functions and profession to the height demanded by modern times, relieving them of the new demands of science and investing them with a prestige and security they have not heretofore had, it is evident that there is no reason for indemnification, nor that any right whatsoever has been violated.

Notwithstanding this, the colonial secretary does not wish to absolutely bar steps being taken to institute the remedies which it may be desired to make use of, nor to repulse any means for claims; but he is under the necessity, which can not be prescinded from, to avoid future confusion and artful claims, by determining how and in what manner this matter must be proceeded with and by facilitating the means of arriving at a definite decision in each and every one of such cases. And this is so logical and foresightful that the injury or damage which is supposed to have been caused apparently does not result from the proceedings, their computation, the concrete claim of the persons interested, and the justification of the alleged facts, and nothing could be decided by the colonial secretary, either with regard to the right nor to the amount of the indemnification.

Nor is the advisability of explaining the provisions of article 10 of the notarial decree-law ignored by the Government. To be a notary said article requires, among other conditions, to have pursued the studies and complied with the other requisites prescribed by the laws and regulations, or to be a lawyer. It was natural that these studies, as was done for the Peninsula, should be specified in the regulations; and notwithstanding article 5 of the same, which treats of this question, limits itself to prescribing that for the office of notary, besides the qualifications prescribed by the said article 10, it was necessary not to have any permanent physical impediment or defect for the duties thereof.

A distinguished commentator on this question, in treating of the aforesaid article 10, understands without admission of doubt that the studies required are the academical ones prescribed by law for the notarial profession; but the law in question having been written for application in the colonies, where at the time of its publication no academical degrees were required for said profession, and although it is true that in the University of Habana all notarial degrees are conferred, it is also true that said institution is governed by a special plan of studies different from that of the Peninsula, therefore, to avoid justified doubts, it is considered necessary to state that the studies referred to in article 10 of the decree-law are those which constitute the notarial profession in the University of Cuba, according to the plan of studies in force or which may in the future be adopted, but without this being an obstacle to the full right of admission of the persons who prove, in accordance with the laws of the Peninsula, that they have passed the same in the universities of the latter.

But notwithstanding this facility of means which was in justice due the loyal sons of the colonies, it is more than possible that in view of the indifference with which the creation of said profession was received in the islands, the very small number of alumni who took the degrees thereof, according to official data, and the distance which separates the territory of Puerto Rico, where said course of studies does not exist, involves at first the natural inconvenience of a lack of applicants, not only sufficient to fill the same, but also in sufficient number to arouse interest, to give character to the competitive examinations, and to facil-

itate the selection of an apt and competent personnel for the discharge of so difficult as well as noble a mission which the law intrusts to them. A competitive examination searches, no doubt, for the demonstration of the greatest number of acquirements, and if there are no competitors nor rivals over whom to triumph, it is logical to say that it will fail of its principal object and will not fulfill the purpose for which it is instituted.

Taking these facts into consideration, the colonial secretary, considering the capacity which will be required in the future on account of the importance of a notarial office, and in view of the reasons set forth, aside from other ones of equal importance, considers the amendment of the first part of article 9 of the Regulations for the Execution of the Notarial Law in those Islands of general utility in such manner that the competitive examination which is held according thereto in the seat of the association to which the notarial office corresponds, be subdivided among those provinces and the Peninsula, said examination being held without change and exactly in accordance with the series originally established, in the respective seat, in accordance with the prescriptions, and another in the Peninsula through the superior court established at Madrid.

This decision embraces also the same regulations in question, in so far as they treat of the competition for promotion series, declaring the same common to the Peninsula and to the islands of Cuba and Puerto Rico, without it thereby being possible to censure that a similar principle be applied to the remaining competitive examination series.

In view of all these considerations, the President of the Executive Power, in accordance with the suggestion of the department, and hearing the opinion of the council of state in full, has adopted the following provisions:

1. The owners of offices authorized to certify, conveyed or conferred with the clause of reversion to the State for the price of egression or other fixed sum, shall be indemnified in accordance with said clause.

Other owners of said alienated offices shall receive by way of indemnification, first, the amount of the egression and confirmation; second, the amount which appears to have been satisfied in addition.

The persons interested shall, when the proceedings are instituted, formulate the proper, clear, and concrete claim regarding the right they exercise in accordance with the foregoing provisions, duly proving in the same the exactness of the facts alleged and the case or cases applicable to the indemnification.

2. The possessors of offices for one life only do not have a right to any indemnification whatsoever.

Without prejudice to the provisions of the foregoing paragraph, if said possessors consider themselves injured in any manner, they may institute the proper proceedings for indemnification, in which they shall state their motives and reasons, the amount they claim by virtue thereof, and the proper legal justification regarding the existence of the same, and the appraised valuation.

The Government shall decide as may be proper, previously hearing the proper department of the council of State.

3. The studies referred to in article 10 of the decree-law of October 29, 1873, are understood to be the ones which constitute the notarial course in the universities of Cuba, according to the plan of studies in force or which may in the future be adopted; but without this being an obstacle to the full right of admission of the persons who are eligible, in accordance with the laws of the Peninsula, for having pursued the same in the universities thereof.

4. The competitive examination series referred to in article 9 of the regulations for the execution of the notarial law shall be subdivided, without changing the same, between the Peninsula and the Islands of Cuba and Puerto Rico, said examination being held once in the capital of the territory where the vacancy has occurred, and another time at Madrid, or what is the same thing, for the vacancies corresponding to the same series, alternately in Madrid and the seat of the respective Colonial Notarial Association.

All of which I communicate to Your Excellency by order of the President of the Executive Power, for its application, observance, and fulfillment.

Madrid, December 15, 1874.—ANTONIO ROMERO ORTÍZ.

To the Governor-General of ———.

To the Presiding Judge of the Audiencia of ———.

The royal decree of April 12, 1878, further explains at the same time the provisions contained in the foregoing decree and order, which is as follows:

ARTICLE 1. The owners of alienated public offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce, in due form, the indemnification treated of in the decree of February 25, 1874, and the circular order of December 15 of the same year, shall have a right to presentation in person or of a third party for once only for the notarial offices which take the place of their offices in the same towns or districts, provided the nominee has the qualifications prescribed by article 10 of the law, and article 5 of the regulations of October 29, 1873.

The nominee shall not be subjected to a competitive examination, but will have to prove, in an examination held before the audiencia of the territory, that he possesses the knowledge required by article 11 of the said regulations.

ART. 2. If the owner of the office or the person nominated to fill the same does not possess the required conditions, or does not pass the examination, a new candidate may be nominated.

Finally, with regard to the owners of the abolished "Anotadurías" of mortgages of Cuba and Puerto Rico, which, under the title of "Notaries of the Indies," issued certifications, a royal decree was issued on February 9, 1883.

It is as follows:

At the suggestion of the colonial secretary, in accordance with the opinion of the colonial, state, and grace and justice departments of the council of state—

I decree the following:

ARTICLE 1. The owners of the abolished anotadurías of mortgages in the islands of Cuba and Puerto Rico, who, under the title of notaries of the Indies, were issuing certifications with their own protocol by virtue of the law of March 3, 1873, may continue to discharge said duties after renouncing the right to indemnification granted them by the royal decrees of February 28 and June 27, 1873.

ART. 2. The owners of the offices mentioned in the foregoing article, who are only recorders (anotadores) and to whom the right to an indemnification is granted, may apply for nomination for their own benefit or for that of another person for once only for the notarial offices of the same towns or districts or for others of the same or of a lower class, which are vacant and are to be filled, in accordance with what is prescribed by article 11 of the royal decree of September 30, 1875.

The suppressed *anotadurías* which are united with another alienated office shall not be considered included in the preceding rules, as they have no right to an independent indemnification; their owners shall only be indemnified for the principal office with its annexes, in accordance with the general provisions regarding the reversion of alienated offices.

ART. 3. The person nominated, in accordance with the first paragraph of the foregoing article, shall be relieved from proving the income and from entering the notarial profession through a competitive examination; but he will have to prove that he possesses the conditions prescribed by articles 10 of the law and 5 of the regulations of October 29, 1873, and in an examination before the audiencia of the territory that he possesses the knowledge required by article 11 of the said regulations.

ART. 4. If the nominee does not possess the conditions required, or should not pass the examination, a new candidate may be nominated.

ART. 5. After a notarial office has been declared vacant, there shall be announced in the *Gacetas* of Habana and Puerto Rico that it is to be filled, in order that the owners of alienated offices who desire to make use of the right of nomination granted in the royal decree of April 12, 1878, and in article 2 of the present one, may address their written applications to the presiding judge of the proper audiencia within the period of thirty days, counted from the day following the publication of the announcement.

The applications shall be forwarded to the colonial secretary through the presiding judges of the audiencias after the classification of the applicants has been made by the chambers of administration, in accordance with the provisions of the following article:

ART. 6. When there are two or more applicants the following order of preference shall be observed:

First. The owner of an office authorized to certify, conferred in perpetuity, which is situated in the same town of the notarial office to be filled.

Second. The owner of an office as recorder (anotador) of mortgages of said town.

Third. The owner of an office of either of the two classes mentioned, situated in another town.

When there are two or more of the same class, the owner of the office having the highest value shall be preferred.

ART. 7. Should there not be an applicant who is the owner of an alienated public office who has a right thereto, in accordance with the provisions of this decree, it shall be filled according to the proper order of succession, in conformity with the prescriptions of article 8 of the notarial regulations.

Issued at the Palace on February 9, 1883.

ALFONSO.
GASPAR NÚÑEZ DE ARCE,
Secretary for the Colonies.

APPENDIX IV.

Royal decree of November 14, 1885, creating a registry for last wills and testaments.

SIR: The honorable jurists who drafted the original mortgage law, respecting the general principle that instruments not recorded should not prejudice third persons, so stated it in an absolute manner in article 23, with the object of securing the development of land credit, and even at the risk of injuring, in certain cases, the most just rights.

The difficulty of its establishment and the work entailed by its practical application were consequences of the radicalism of such a prescription, suspensions and extensions to declare it in force having taken place, and the necessity to except from said general principle the record of instruments of inheritance or legacies is acknowledged through "the impossibility to legally prove that a will which is presented as a title to secure a record is not repealed by a prior one, drafted with a clause of annullment, having been revoked by the testator;" and the modification of article 23 of the law of 1869 was founded thereon, it being complemented by the paragraph establishing that the record of property acquired by inheritance or legacy does not prejudice a third person until after five years from the date of the record have passed.

The right of persons who were really entitled to an inheritance was, by said addition, protected, but not without detriment to land credit, as during said period a record could not inspire the confidence necessary to attract capital to real estate acquired by inheritance.

This gave rise to a third paragraph being added to the same article by a law of July 17, 1877, and according to which the record of property acquired by legal heirs prejudices third persons from its date, should there be a will or not.

Such important changes and repeated vacillations in one of the fundamental bases of the law attracted the attention of the Government of Your Majesty, and the undersigned secretary, desirous of conciliating, in so far as practicable, the development of land credit with the due respect of the said rights, has considered himself able to do something toward this end, although without attempting the legal modification of our mortgage system, by creating a general registry for all last wills executed in Spanish territory, and even abroad before our consular agents.

Being established in a convenient manner, it will give persons who believe that they have a right to or are in hopes of an inheritance, a notice of said wills with regard to a certain person; it will avoid that property be recorded by virtue of titles which, although good, should not have any legal efficacy by the said will of the testator; it will lessen the probabilities which exist at the present time of declaring heirs *ab intestato* when there are heirs by will; and, finally, it will give the public who desire to invest capital in real estate acquired by inheritance more sources from which to ascertain, in so far as practicable, what is of greatest interest to it—that is, whether the contract executed with the person who appears to be the owner according to the registry will be exposed or not to its invalidation within the period of five years.

The project requires that the greatest secrecy regarding wills recorded during the lifetime of the testator be observed, but as soon as his death has been proved the registry is made public, as no prejudice can result from their being made known; the persons interested are obligated before obtaining a declaration of heirship *ab intestato* or the judicial approval of partitions made by virtue of a will, to present in the proper inferior court a certificate stating the wills which may have been recorded relating to the testator; notaries are prohibited from authenticating instruments of award or partition, if this certificate is not presented to them, and, finally, in order that the registry, the creation of which is proposed, may have its principal effect, registers are required to state the contents of the certificate in the record.

In this manner, without introducing any modification whatsoever in the civil law, without attempting to know the will of the testator, without adding formalities to those which are to-day required to validate instruments in which the disposition of property after death is ordered, and without altering the prescriptions of article 23 of the mortgage law, the undersigned secretary believes that third persons will be granted greater security, as even during the five years the effects of the record are to be suspended, they do not run the risk of being despoiled by heirs having a better right.

And this will not be the only advantage of the project, if it meets with the approval of Your Majesty. The registry once established, judges and courts will have a new source from which to ascertain the existence of last wills, with regard to the falsity of which litigation arises.

The basis and the authorized precedent of this registry are the ones which are kept with beneficial results in various provinces, due to the initiative and zeal of their notarial associations, some of which the undersigned secretary has had occasion to examine personally, this valuable experience causing him to generalize on the subject. The present reform is nothing more than the beginning of a service which at some future time will require development by legal precepts of greater scope; but it is of importance to establish it immediately in order that the benefits thereof may accrue and be fully utilized in the definite reforms to which our civil law must be subjected at a period which, depending upon the patriotism of all parties to assist in this national work, is believed to be not far distant.

Based on these considerations and after having heard the opinion of the chambers of administration of the audiencias, that of the boards of directors of the notarial associations, and that of the board of officers of the registry division, all of which agree to the usefulness of the institution, the undersigned secretary, in accordance with the council of secretaries, has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, November 14, 1885.

Sir, at the royal feet of Your Majesty,

FRANCISCO SILVELA.

ROYAL DECREE.

In conformity with the suggestion of the secretary of grace and justice, in accordance with the opinion of the council of secretaries,

I decree the following:

ARTICLE 1. From January 1, 1886, there shall be kept a general registry of wills in the general administration of civil registries and those of property and of notaries.

The private registries which shall also be kept in each one of the offices of the deans of the notarial associations of Spain and the colonies, as well as the data furnished by the consular agents abroad, shall serve as a basis for the general registry.

ART. 2. The general registry shall contain—

(*a*) Open or sealed wills, codicils, powers to bequeath, revocations, retractions of the latter, gifts *causa mortis*, declarations of poverty in which property which may be acquired in the future is disposed of, and in general all instruments relative to the expression or modification of last wills in which a notary assists, either of the Peninsula, adjacent islands, or colonies, or a parish priest at places where, according to law, right, or custom, he assists as certifier, or a consular agent abroad.

(*b*) The declarations made by judges to the effect that the instruments presented to them for this purpose are wills or the depositions of witnesses in a proper case, and of the decrees issued ordering that testamentary memorials be included in protocols.

(*c*) Final judgments which affect the validity of testaments and other acts of last will.

ART. 3. The general registry, as well as the private ones, shall be kept on sheets which contain the following printed columns: First, names and surnames of the testators; second, their character; third, residence or domicile; fourth, status (whether married or single); fifth, names and surnames of their parents; sixth, notary or official who authenticated the instrument, or the judge who made the declaration or issued the decree, and clerk who officiated; seventh, town in which it took place; eighth, date; ninth, character of the last will; tenth, remarks.

ART. 4. The general registry and the private ones of each notarial association shall be secret, under the liability of the personnel in this service in the administration and offices of deans of notarial associations.

Certificates may only be issued in accordance with the contents of the general registry in the following cases: First, when they are requested by judges or superior courts or officials for business of the service; second, when the principals themselves request them, proving their identity; third, when they are requested by any person, if he proves with an authentic document the death of the person of whom it is desired to ascertain whether any last will has been recorded or when said death is already known.

The certificates shall be issued by the chief of the bureau, countersigned by the director, on the proper stamped paper, which shall be furnished by the petitioners, who shall pay 1 peseta for each certificate as fees. These amounts shall be destined to cover the expenses of this service until, they and the income having been ascertained, either may be included in the budgets of the State.

The proper draft of all certificates issued, authenticated with the rubric of the director and surname of the clerk, shall be filed.

ART. 5. Parish priests, judges of first instance, and notaries of the Peninsula, adjacent islands, and the colonies, who in any manner whatsoever take part in the executions or declarations mentioned in article 2, shall direct a communication within the third day, computed from the date of the execution or declaration, to the dean of the respective notarial association, in which, in separate and numbered paragraphs, the data mentioned in article 3 shall be included. In case all of them can not be stated, they shall state that the ones included are the only ones they have been able to obtain.

The consular agents of Spain abroad shall forward to the general

administration the communication referred to in the preceding paragraph. The administration shall issue printed forms for the communications.

As soon as notaries forward the communication, they shall state this fact by means of a memorandum at the margin of the respective instrument, collecting 1 peseta therefor, which must be paid by the party interested. Half of the fees collected by the notaries in this manner shall be credited to the treasury of the respective notarial association, being destined, in so far as necessary, to defray the expenses caused by this new service.

ART. 6. Deans of notarial associations, immediately upon receiving the communications referred to in the preceding article, shall order that the data be entered in the private registry to be kept in the office of the dean. The private registry of each territory shall be kept according to alphabetical order of surnames, on sheets containing columns of common paper, which shall be bound annually, the manner of conducting this service being in charge of the respective boards.

The administration shall issue to the same the necessary sheets, also of common paper, so that in the proper columns there may be entered, in alphabetical order of surnames, the data contained in the communications, entire sheets being assigned to each letter of the alphabet.

ART. 7. On the 1st and 16th of every month the deans of the notarial associations of the Peninsula and Balearic Islands shall forward to the direction such sheets which are entirely filled, stating in the communication the number they forward, the number begun, and the entries contained on each one of the latter, with a statement of the letter to which they correspond.

If, on the day the transmission is to be made, there should not be any sheets which have been completely filled, corresponding to one letter, said transmission shall be deferred until the following one, on which day it shall be made, although no sheet has been filled.

The direction shall form the general registry with the sheets which are forwarded by the deans of the notarial associations and with the data furnished by the consular agents, which must also be contained on full sheets, one for each letter. There shall, moreover, be kept a strict alphabetical index to facilitate the search for entries in the general registry.

The deans of notarial associations of the Canary Islands and the colonies shall forward their sheets every month in the same manner.

Consular agents shall forward the proper communication within the same period of one month.

ART. 8. Whenever a declaration is requested that a person has died *ab intestato* or the judicial approval of partitions made by virtue of any last will, there shall be presented in the proper court of first instance a certificate of the direction stating those which appear recorded or that none made by the testator appears recorded.

The certificate shall be attached to the decrees, and, without prejudice to the judge deciding what he may deem proper, he shall observe in making the declaration of death *ab intestato* or in approving the partitions that the contents of the certificate are entered.

ART. 9. Notaries who are requested to certify to instruments of awards or partitions of property acquired by testate inheritance shall require the persons interested to present to them a certificate of the direction stating whether there appears recorded or not any other last will of the principal. The certificate shall be attached to the original instrument and shall be included in the copies which may be issued.

ART. 10. Registers of property shall briefly state in the record the property acquired by testate or intestate inheritance, the contents of the certificate of the direction, and shall suspend it for a defect capable of correction if the latter is not included in the instrument or in the decree of declaration or in the judicial approval.

ART. 11. The general division of registries and notaries shall exercise a general inspection of this service and shall administratively correct any errors which may be corrected by the officials in charge of the same.

TEMPORARY PROVISION.

The proper rules for the execution of this royal decree by the officials upon whom its fulfillment is incumbent, shall be issued by the state, grace and justice, and colonial departments.

Issued at Pardo on November 14, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

APPENDIX V.

Royal decree of March 7, 1893, modifying the notarial demarcation of the Island of Cuba.

COLONIAL DEPARTMENT.

INTRODUCTION.

MADAM: The royal decree of September 30, 1875, fixed the notarial demarcation of the Island of Cuba, establishing 66 notarial offices in the territory of the audiencia of Habana and 26 in that of the audiencia of Santiago de Cuba; that is, a total of 92 notarial offices in the entire island.

The numerous changes effected since that date in the judicial division of the island, to which the notarial demarcation should subordinate itself, and the consideration that in a few years the movement of contracts has changed, induced the general administration of grace and justice of this department to institute proceedings to change said notarial demarcation, and having requested the data required by the notarial law of October 29, 1873, the treasury and colonial departments of the council of state were consulted.

All the reports agree that the actual notarial demarcation of the island requires an immediate modification. In changing the judicial division no provision stated what notarial offices were to be under the jurisdiction of the new courts, and a large number of notarial offices have been vacant for some time on account of a lack of applicants, notwithstanding several calls and the reduction of the sureties, it being evident that the requirements of contracts have varied in a radical manner in many localities since the rather distant date of said demarcation.

The difference of opinion among the bureaus which have issued their reports are not numerous nor of importance. With regard to the territories of the Audiencias of Habana and Matanzas, the chamber of administration of the former and the Notarial Association differ only with regard to the notarial offices of Nueva Paz, La Esperanza, and Ceja de Pablo, the retention of which is suggested by the chamber and the bureau of administration of grace and justice, the association and the treasury and colonial division suggesting that it be abolished.

With regard to the notarial offices of Havana, the audiencia and the association believe that their number should be reduced to 12, while the said direction, the dean of the judges, and the treasury and colonial divisions of the council of state that a change from the actual number of 20 would not be proper, because the public will be better served by said number without detriment to the appropriate living of the notaries, taking into consideration the population and the number of instruments executed. It appears from the data collected in the proceedings that at the present time from 10,000 to 12,000 instruments are executed

in said capital per year, which makes an average of 500 to 600 instruments for each one of the 20 notaries; and comparing the population of Habana, which, according to the last census of 1887, amounted to 200,448 inhabitants, with that of the more important cities of the Peninsula, such as Barcelona, Seville, Valencia, and Madrid, it appears that 20 notaries in the capital of the island correspond to one notarial office for every 10,000 inhabitants, while Barcelona has one for every 5,700, Seville one for every 7,500, and Valencia one for every 9,400; and therefore, by fixing the number of 20 for the capital of the island, the notaries will be benefited.

It does not appear that the decrease in contracts has markedly affected Habana, an important diminution having been made in the public offices authorized to certify, when the 44 which previously existed were reduced to the 20 actual notarial offices. Statistics of fees are lacking, and, taking into consideration all that the data collected suggests, it would be most prudent not to change the actual number of 20 notarial offices in Habana and immediately abolish those of Nueva Paz, Esperanza, and Ceja de Pablo.

With relation to the territory of the audiencia of Santiago de Cuba, there is no doubt that the opinion of the direction and the proper department of the council of state should be observed, which is against the abolition of the notarial office of Bayamo, suggested by the notarial association, as there is no other one in the district of the inferior court; it is not advisable to create the notarial office suggested by the chamber of administration, in Mayarí, because, as the association states, there do not as yet exist there the elements for the appropriate living of a notary, who may perhaps establish himself when the central plantations situated on the bay of Nipe develop; it is necessary to suppress the notarial offices of El Cobre, Caney, Sagua de Tánamo, Las Tunas, Jiguaní, and Nuevitas, which lack applicants at all calls, because the emoluments of the same are not sufficient to defray the expenses of their holders; those of Morón and Ciego de Avila can be united into one, which will be sufficient to attend to the service and which will constitute a fair income for the official who may take charge thereof, and, finally, it is proper to reduce the notarial offices of Puerto Principe to four, the same number existing in Santiago de Cuba, a town of more importance and wealth.

In modifying the notarial demarcation, the undersigned secretary has deemed it proper to attach thereto the complementary provisions tending to facilitate its quicker and more efficient establishment, prescribing the rules to which the filling of notarial offices are to be subject, which will improve the public service and elevate the notarial class still more. This was done in the Peninsula at the time the royal decrees of demarcation of November 9, 1874, January 20, 1881, and June 2, 1889, were published, and it is still more convenient to follow this procedure in modifying that of the island of Cuba, on account of the existing reason to combine and harmonize the prescriptions which for said filling are contained in article 12 of the notarial law and article 8 of the regulations issued for its execution, with the provisions of the royal decrees of April 12, 1878, and February 9, 1883, which permitted owners of alienated offices authorized to certify and recorders of mortgages who renounced to the indemnification, the rights to have themselves or another person nominated, for once only, to fill the notarial offices which took the place of their offices in the same town, or to apply for the vacancies.

These provisions, however proper they were, tended to abolish and fill,

little by little, the large number of alienated offices which exist in the islands of Cuba and Puerto Rico, without burdening the public treasury; but applied according to the general interpretation which was given them, they retarded the filling of notarial offices in the manner which the notarial law established; that is, by competition for promotion, or competitive examination, whenever according to the provisions of article 7 of the last cited royal decree, only in cases when no owner of an alienated office requests the vacancy, is when they may be filled according to the proper series established by article 8 of the said law.

In consequence of this provision it has become exceedingly difficult for notaries to rise or obtain promotion in their respective category, depriving them of a hope which they may justly entertain.

It is advisable, therefore, as suggested by the treasury and colonial departments of the council of state, that without injuring nor depreciating in the least the rights of the owners of alienated offices, by reestablishing in the temporary provisions of this decree the spirit and letter of the royal decrees of April 12, 1878, and February 9, 1883, always giving preference to the owners of alienated public offices authorized to certify and to recorders (anotadores) of mortgages, during the time said offices exist in Cuba and Puerto Rico, to choose the vacant notarial offices by means of their nominees, to perfect the rules for promotion and transfers of practicing notaries, applying to the island of Cuba the third provision of article 12 of the notarial law for the Philippines, which admits the series of competitive examinations as suppletory only and when the notarial offices are not requested by said notaries, ordering that the examinations be alternately held for each vacancy, once in the islands and the other time in Madrid, in order to permit natives of the Peninsula as well as those of the islands to enter the profession.

In observance of the provisions of the royal decree of August 23, 1891, drafted by the department of grace and justice, which permitted colonial notaries in certain cases to choose vacant notarial offices of the Peninsula in competition with those who practice in the latter, the annexed decree orders that notaries of the Peninsula may also choose in the series of competition for promotion, together with those of Cuba, Puerto Rico, and the Philippines, limiting transfers to those of Cuba only. In this manner, without prejudice whatsoever to the latter, but rather granting them new guaranties for rise and promotion, the reciprocity which must exist for the filling of notarial offices between the Peninsula and the colonial provinces is retained.

The great importance which the notarial institution has acquired, demands of the persons who are to discharge the duties thereof the greatest conditions of aptitude possible—the several acquirements necessary by virtue of the diversity and variety of modern contracting. For this reason the competitive examinations are enlarged by extending the subjects they are to include, besides those required by article 11 of the regulations in force, to the studies of commercial, penal, administrative, and private international law, legislation on stamped paper, and the tax on property rights and transfers of property in harmony with the prescriptions for competitive examinations to fill notarial offices of the Peninsula and the Philippines.

It is necessary to introduce in the decree some rule for the election of the boards of directors of the notarial associations of Matanzas and Santiago de Cuba, which would be impracticable if said boards are to be composed of notaries who reside exactly in the seats thereof, as provided by article 98 of the Notarial Regulations, article 97 prescribing

that boards must be composed of 5 members, and the demarcation assigning 4 notaries only to each one of said seats. But this difficulty is not a new one in notarial legislation; the same thing occurs in the seats of associations like Albacete, Cáceres, Las Palmas, and Oviedo; and it is solved in the same manner as was decided for the Peninsula in article 15 of the royal decree of January 20, 1881, and for Puerto Rico in article 8 of the one of March 8, 1883; that is to say, authorizing the election of notaries of other residences as members of boards of directors, with certain limitations.

There having been established in the previous royal decree of notarial demarcation of Cuba, published on September 30, 1875, the rules which are to govern substitutions of notaries in cases of incapacity, absence, or sickness, and experience having proven that they were just, it appears proper to renew them now.

If the data which the notarial law in its article 3 requires to establish or modify a notarial demarcation can be procured, it is certain that said demarcation would answer better for the public service; but in the Peninsula as well as in Cuba and Puerto Rico the indispensable statistics to ascertain the number of instruments and contracts executed in each notarial office are lacking, as well as those relating to the importance of the questions they involved, the value of the stamped paper used in the protocols and in the copies and the fees collected by the notaries.

The only attempt at keeping notarial statistics are those which have been kept in the Philippines, in accordance with title 10 of the notarial regulations for those islands, and the undersigned secretary, considering the establishment of this reform very beneficial, suggests that it be included in the notarial regulations for Cuba and Puerto Rico when the time to modify the actual ones arrives, after having received the data requested of said islands, in this manner greater perfection being at some period attained.

In virtue of the remarks made, the undersigned has the honor to submit the annexed draft of a decree for the approval of Your Majesty.

Madrid, March 17, 1893.

Madam, at the royal feet of Your Majesty,

ANTONIO MAURA Y MONTANER.

ROYAL DECREE.

At the suggestion of the colonial secretary, in accordance with the council of secretaries and with the opinion of the treasury and colonial departments of the council of state, in the name of my august son the King, Don Alfonso XIII, and as Queen Regent of the realm, I decree the following:

ARTICLE 1. The notarial demarcation which is fixed by the annexed table, modified in accordance with the prescriptions of article 4 of the organic notarial regulations of October 29, 1873, shall become operative in the island of Cuba from the date of its publication in the *Gaceta* de la Habana.

ART. 2. For all legal effects notarial offices shall be divided into the following categories:

1. Of the seat of a notarial association;
2. Of the seat of a province;
3. Of the seat of a notarial district, and
4. Local notarial offices.

ART. 3. Notarial offices which are actually vacant and which do not appear in the table approved by article 1 are hereby abolished.

The other notarial offices which are not included in the new demarcation are also abolished as soon as their actual holders cease in the same for any reason whatsoever.

ART. 4. The filling of vacant notarial offices in the island of Cuba shall take place subject to the following order of series established for each category and for each one of the notarial associations in which the island is divided:

1. Transfers as rewards among notaries of the island of Cuba.
2. Competition for promotion between notaries of the Peninsula and of the islands of Cuba, Puerto Rico, and the Philippines.

The vacant notarial offices which are announced in the foregoing series which can not be filled on account of a lack of applicants or because the latter lack the proper qualifications, shall be filled by competitive examinations.

The competitive examinations shall be held once in the island of Cuba and another time in the Peninsula, the examination being held the first time in the seat of the notarial association where there is the vacancy and the second in Madrid, continuing thus alternately.

ART. 5. In the transfer series the Government may transfer notaries of Cuba at their instance and as a reward; but they can not be transferred to a notarial office of a higher class if they have not previously served four years at least in a notarial office of a lower category. No fixed period shall be required for notarial offices of the same category.

In this series notaries in a category lower by two or three degrees may apply for the vacancy, provided they have served more than eight or twelve years, respectively; but they shall only be appointed in default of those who possess the conditions prescribed in the foregoing paragraph.

ART. 6. In the series of competition for promotion, to which the notaries practicing in Cuba, Puerto Rico, the Philippines and the Peninsula may aspire if they request it, the senior one in the service of the profession shall be appointed, provided he possesses a notarial office of a higher or equal category to the vacant one, or being lower by one, two, or three grades, he has served more than four, eight, or twelve years, respectively.

ART. 7. For the filling of vacancies in notarial offices, the colonial department shall in each case institute the proper proceedings. There shall also be kept a book in which to enter the series to which the vacancies correspond, according to the dates on which they occur, which said department shall declare in each case.

ART. 8. If the vacancy is to be filled by transfer, it shall be announced in the *Gaceta de la Habana*, fixing the period of thirty current days from the publication in which to present applications to the dean of the notarial association to which the vacancy corresponds.

After the period of the call has passed, the board of directors of the same association shall classify the applicants in this series, taking into consideration in the first place their merits and services as notaries, and in the second place other merits and services, the category and length of service, and the fact of their waiting for orders (excedentes). Should there be more than three, a list of the three first shal' be made, without prejudice to forwarding to the colonial departmen[illegible] e papers of all the applicants who possess the legal requirements. [illegible] appointment of one of the three proposed in the list shall be ma[illegible] [illegible] said list has been correctly prepared; otherwise it shall be retur[illegible] [illegible]e board for amendment, in accordance with the foregoing provi-

ART. 9. If the vacancies are to be filled by competition for promotion, the announcement shall be published in the *Gacetas* of Madrid, Habana, Puerto Rico, and Manila, the period of thirty days being fixed in Madrid and in each one of the islands of Cuba and Puerto Rico, and sixty in the Philippines, from the publication of the respective announcements, in which to present applications.

The notaries of the Peninsula, who desire to be appointed, shall present their petitions to the colonial department, and those of Cuba, Puerto Rico, and the Philippines shall forward them to the same department through the presiding judge of the proper audiencia, who shall transmit them by the first mail after the closing of the limit.

ART. 10. When the notarial offices are to be filled by competitive examination, the announcement of the vacancies shall be published in the official newspaper of Madrid, or of Habana, according as to whether the examination is to be held in the Peninsula or in Cuba, the period of thirty days being fixed in which the applicants may present their petitions to the colonial department or to the presiding judge of the audiencia of the territory where the vacancy has occurred, respectively.

If there are several notarial offices announced, they may be requested in one communication, stating briefly the ones desired and their order of preference, in a proper case.

In order that applicants may be admitted to the competitive examinations, they shall have to prove that they possess the conditions required for the position by article 10 of the notarial law and article 5 of the notarial regulations, for which purpose they shall attach to their petitions the proper documents which prove the same.

ART. 11. The competitive examinations shall be held in the manner prescribed by article 9 et seq. of the said regulations of October 29, 1873, with the modifications mentioned in the following articles:

ART. 12. The board which is to pass on the examinations held in the seats of the respective notarial associations shall be constituted in the manner established by the said article 9.

The board of examinations for those held in Madrid shall be composed of the official appointed by the colonial secretary, as president of the board, who must be a lawyer, and have the category of a chief of administration or associate justice of a territorial audiencia.

One professor of law of the Central University, appointed by the rector of the same.

One lawyer of the bar of Madrid, to be named by the dean of the same.

The dean of the notarial association of Madrid and the secretary of the same association, who shall act as secretary of the board.

ART. 13. The competitive examinations shall consist of two subjects for each applicant—one theoretical and the other practical. Both shall be public.

The first subject of the competitive examinations shall consist in answering twelve questions corresponding to the following matters: Two to civil law; two to mortgage legislation; two concerning notarial legislation; one to commercial law; one to penal law; one to administrative law; one to colonial legislation; one to legislation regarding stamped paper and the tax on property rights and transfer of property, and one to private international law.

The competitor shall select the twelve questions mentioned by lot, and shall answer them immediately, being allowed one hour and a half for this purpose.

The list relating to this examination shall consist of 240 points at least, two-thirds thereof to embrace civil law, mortgage legislation,

and notarial legislation, the remaining third including the other subjects.

The list relating to the practical exercise shall contain 50 themes at least, corresponding to the same number of public instruments. The competitor shall also select by lot one of the said themes, proceeding then, and during the period of one hour at the most, to draft and place the instrument in the protocol; and when delivering it to the board, he shall verbally state what may be the form of the drafting of said instrument or contract, its necessary clauses, the notices which must be made, and anything else which must be done until the instrument is placed in the protocol and the first copy issued.

The board shall see that there are in the boxes more than half the number of questions corresponding to each subject and theme for the second examination, and shall make no remarks nor ask any questions of the competitor.

ART. 14. The colonial secretary shall prepare the list of questions and themes which are to serve in all the competitive examinations for the two theoretical and practical examinations which shall be published in the *Gacetas* of Madrid and of Habana, and communicated to the presiding judges of audiencias, for the due uniformity in the examinations which may be held.

ART. 15. The notarial offices which have been announced in any of the series mentioned which can not be filled on account of a lack of applicants, or because the latter do not possess the necessary requisites, shall be filled according to the series to which they again correspond, placing them according to the dates in which the vacancies occur in the corresponding book and not being subject to competitive examination until they have been declared abandoned in the series.

ART. 16. The notarial offices which become vacant by virtue of the provisions of article 117 of the Regulations shall not be filled according to the series, but by competitive examinations, which shall also be held alternately in the Peninsula or in the island of Cuba.

ART. 17. As members of the boards of directors of Matanzas and Santiago de Cuba there may be elected notaries who do not reside in the capital, but the dean and the secretary must in all cases reside therein.

Notaries who do not reside in the capital of the association, who are elected for the board of directors, shall betake themselves to said capital only for the duties proper to the offices conferred upon them, making use of the privilege granted them by article 113 of the Organic Regulations, or previously obtaining in accordance with the same the leave of absence they may require.

ART. 18. In the case of legal substitution provided for in article 6 of the notarial law, in places where there exists more than one notarial office, they shall mutually substitute each other.

In places where there is only one official of this class, he shall be substituted by the one of the nearest town, to be designated by the judge of first instance, who shall inform the respective audiencia thereof at the proper time.

ART. 19. In places where there are two or more notaries, in case of the occurrence of a vacancy or legal substitution, the one who follows in seniority, according to his diploma, shall be the substitute, and if it should be the newest one, he shall be substituted by the oldest in seniority.

ART. 20. The substitutions which are ordered may be changed for just cause duly proven in administrative proceedings, on the decision of the chamber of administration of the audiencia of the territory to which the notarial office corresponds.

ART. 21. In the special cases referred to in article 115 of the Notarial Regulations, the notary who is temporarily incapacitated may designate another one of the same residence to substitute him, and should there not be another one, the substitution shall be made in the manner prescribed for vacancies.

ART. 22. The substitution of the vacant notarial offices does not give the substitutes any further right than to take charge of the protocol, being under the obligation to guard the same and to issue the copies which, in accordance with law, may be required thereof.

ART. 23. All prior provisions in conflict with the execution of the present decree are hereby repealed.

TEMPORARY PROVISIONS.

1. As long as there exist in the islands of Cuba and Puerto Rico alienated offices authorized to certify, conferred in perpetuity, and of anotadurías of mortgages the owners of which have a right to indemnification from the State for their respective offices, having requested it within the period fixed in the decree of February 25, 1874, February 28 and June 27, 1879, all the vacant notarial offices which exist at present and which may later become vacant, with the exception of those caused by pensions, the amount of which is to be paid by the successor in the notarial office, and which are treated of in article 117 of the Notarial Regulations of October 29, 1873, shall be filled without subjection to the series and with absolute preference between the owners of alienated offices of said classes to which the right to indemnification has been declared and who have renounced the same in due form to the State, according to the rules established in the royal decree of February 9, 1883, which grants said owners the right to personal presentation or of a third person for once only for notarial offices which may be vacant and which determined the manner of filling the same.

2. Should no owner of an alienated office who has a right thereto in accordance with the provisions of the said royal decree of February 9, 1883, request the vacancy, it shall be filled in accordance with the proper series, as provided in the present decree.

3. According to the royal decree of April 12, 1878, the owners of alienated offices conferred in perpetuity in the islands of Cuba and Puerto Rico who renounce in due form in favor of the State the indemnification treated of in the decree of February 25, 1874, and in the circular order of December 15 of the same year, shall have the right of nomination in person or of a third person for once only, provided they are legally eligible for the notarial offices which take the place of their offices in the same towns or districts, subject to the provisions mentioned, said notarial offices not being considered vacant.

Issued at the Palace on March 17, 1893.

MARÍA CRISTINA.

ANTONIO MAURA Y MONTANER,
Colonial Secretary.

Table of the notarial demarcation of the island of Cuba.

AUDIENCIA OF HABANA.

[Notarial Association of Habana—34 notarial offices.]

Province of Habana:	
Notarial district of Habana—	
Habana	20
Marianao	1
Bejucal	1
Guanabacoa	2
Güines	1
Jaruco	1
San Antonio de los Baños	1
Province of Pinar del Rio:	
Pinar del Rio	2
Consolación del Sur	1
San Juan y Martinez	1
Guanajay	1
Guane	1
San Cristobal	1

AUDIENCIA OF MATANZAS.

[Notarial Association of Matanzas—23 notarial offices.]

Province of Matanzas:	
Matanzas	4
Alfonso XII	1
Cárdenas	2
Colón	1
Jovellanos	1
Province of Santa Clara:	
Santa Clara	3
Cienfuegos	2
Sagua la Grande	3
San Juan de los Remedios	2
Sancti Spíritus	2
Trinidad	2

AUDIENCIA OF SANTIAGO DE CUBA.

[Notarial Association of Santiago de Cuba—18 notarial offices.]

Province of Santiago de Cuba:	
Santiago de Cuba	4
Baracoa	2
Bayamo	1
Guantánamo	1
Holguín	1
Gibara	1
Manzanillo	2
Province of Puerto Príncipe:	
Puerto Príncipe	4
Morón	1

Madrid, March 17, 1893.
Approved by Her Majesty.

MAURA.